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ABSTRACT

The document describes the establishment, development, procedures, and some landmark cases of the U.S. Supreme Court. The objective is to explore the history of the court and to explain its role in the American system of government. The booklet is presented in four chapters. The first chapter, entitled "A Heritage of Law," offers judicial background from the 1606 Virginia Charter to the Constitution and Bill of Rights. The second chapter, which forms the major part of the document, is entitled "Decisions for Liberty." It traces the court's growth of scope through precedent-setting decisions such as Chisholm v. Georgia in 1793, Marbury v. Madison in 1803, McCulloch v. Maryland in 1819, Gibbons v. Ogden in 1824, Dred Scott v. Sandford in 1857, Munn v. Illinois in 1877, Northern Securities v. United States in 1904, Adkins v. Children's Hospital in 1923, Brown v. Board of Education in 1954, Gideon v. Wainwright in 1963, and Roe v. Wade in 1973. Chief Justices and events are described historically in connection with the cases, from John Jay to Warren Burger, as the court's power as interpreter of the Constitution grew. The third chapter discusses court procedures, staff duties, the building, and the duties of the justices. Chapter IV offers a brief description of the powers and limitations of the federal court system, including contemporary reforms and technical innovations. An index concludes the booklet. (CK)

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EQUAL JUSTICE UNDER LAW

THE SUPREME COURT IN AMERICAN LIFE

By Mary Ann Harrell
National Geographic Staff

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OVERLEAF: *James Earle Fraser's "Contemplation of Justice" sits brooding before the main west entrance of the Court.*

ENDPAPERS: *One hundred Justices have served on the Supreme Court since its birth in 1790. The rows of pictures running horizontally present the jurists, with terms of service, in the order of taking the oath. Asterisks indicate the 15 Chief Justices. John Rutledge was named Chief Justice by a recess appointment in 1795 and served briefly, but the Senate rejected him when it reconvened.*

OVERLEAF: JOSEPH J. SCHERSCHEL © N.G.S.
ENDPAPERS: PHOTOGRAPHS FROM THE SUPREME COURT COLLECTION

SOLITARY STAR *below the American eagle distinguishes the Seal of the Supreme Court of the United States. Justices ordered the emblem at their third meeting, on February 3, 1790. Its designers adapted the Great Seal of the United States, adding the star to symbolize the Constitution's grant of judicial power to "one Supreme Court." The Clerk of the Court affixes the Seal to official papers —judgments, mandates, and writs.*

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Foreword

REVERED AND ABUSED as no other court has ever been, least known of the great institutions of the United States, the Supreme Court holds a unique power in the American system of government—a unique place in the American story.

To tell that story and to explain that power, the Foundation of the Federal Bar Association is publishing this book.

George Washington said that "the due administration of justice is the firmest pillar of good Government." The Foundation works to improve that administration, particularly in the federal courts. It acts for the Federal Bar Association, whose 13,600 members have served or now serve as attorneys or judges for the national government.

Believing that each citizen must be the final judge of good government, it has planned this book to serve the public.

When the First Congress was debating a bill to establish a federal court system, one Representative from New Hampshire expected it to "give great disgust." He could see no reason for a national judiciary, "unless it be to plague mankind." His fears have not materialized. Today this system has begun an unprecedented effort at self-improvement and innovation; and this book includes a report on that program of change.

Most people never enter the federal courts, either as parties to a lawsuit or members of a jury—not even as spectators. They think of the courts as strange and remote if they think of them at all. And they believe, with some validity, that the law is a bramble patch of technicalities and strange words. They might reasonably expect the Supreme Court to be the most remote of all, far from everyday affairs. And yet it is not; it is "supreme," but still very close to the lives and activities of all Americans.

From day to day the headlines announce its decisions, the editorials praise and denounce them, and citizens wrangle about them in law schools and living rooms.

We hope this story of the Court will be part of that debate, which began almost as soon as the Justices started hearing cases. Although we believe lawyers will enjoy it, it is not written especially for them, and legal technicalities are not its theme.

The theme is a national adventure. Its episodes are crises and struggles and conflicts. Its setting is a continent and beyond —and a few small rooms.

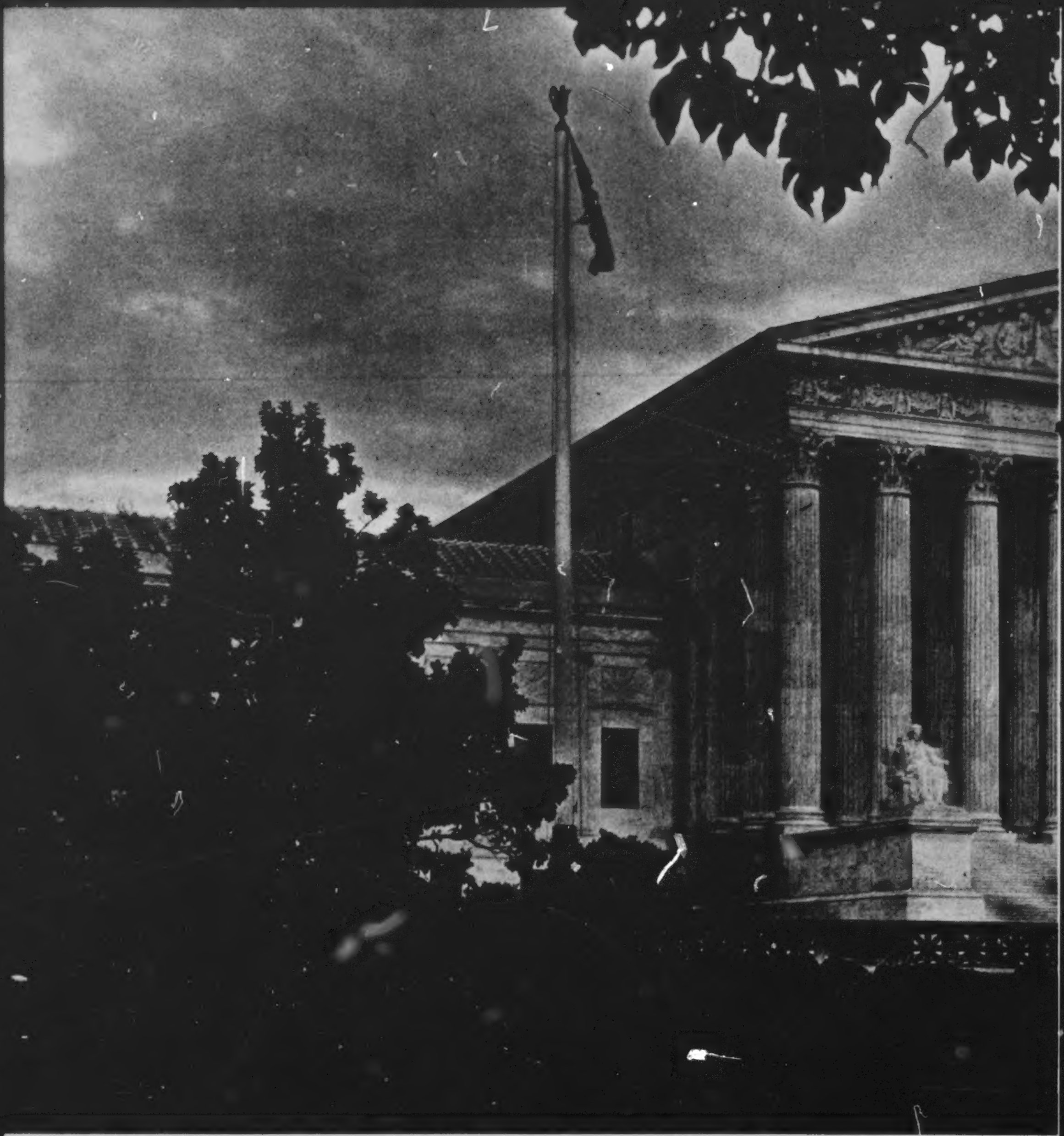
To present this story, Dr. Melville Bell Grosvenor, Editor-in-Chief, and Dr. Melvin M. Payne, President, have generously shared the resources of the National Geographic Society with the Foundation; and we are happy to thank them for their help. In this project, they and their staff colleagues have performed a great service to the Nation.

Members of our Foundation have selected landmark cases and reviewed both text and pictures which follow. The Foundation assumes full responsibility for the contents of the volume, which we are proud to sponsor.

With publication of this edition, the Foundation welcomes a new organization that has joined us in encouraging public interest in the Court: The Supreme Court Historical Society, whose specific purpose is to preserve and extend knowledge and appreciation of the history of the Court and the Nation's judicial system.

For everyone who has worked on this book and for everyone who reads it, we hope it will mean a new devotion to the ideals of the Constitution, to the purposes which have been the special trust of the Supreme Court—"to form a more perfect Union, establish Justice . . . and secure the Blessings of Liberty to ourselves and our Posterity." And we hope it will mean a new pride in law as our way of using freedom.

EARL W. KINTNER
President, The Foundation
of the Federal Bar Association



The Supreme Court of the United States in Washington, D. C.—

A Heritage of Law

“WE ARE very quiet there, but it is the quiet of a storm centre. . . .” In these words Associate Justice Oliver Wendell Holmes—the Great Dissenter—described the Supreme Court of the United States in 1913. His words are just as true today. During its 185 years the winds of controversy have often swirled about the Court, its place in American government, and the 100 Justices who have made its decisions since the early days of the Republic.

EMORY KRISTOF © N.G.S., QUOTATION FROM CORNERSTONE ADDRESS BY CHIEF JUSTICE CHARLES EVANS HUGHES, OCTOBER 13, 1932

"The Republic endures and this is the symbol of its faith."

Every system of justice has some kind of highest tribunal, some court of last resort, to give the final word on a case. But the Court gives the final word on a law, or on the powers of government under law, by the standards of the Constitution. Judicial review, scholars call it. Today some nations follow the American example, but when the Supreme Court developed this power it gave the world a new invention.

How the Court established this power in unlikely circumstances, how it has kept and used it, is the story of this book.

The men who gave us the Constitution and the Court began their work with a successful revolution. Captain Levi Preston fought at Lexington in 1775; he explained why 62 years later: "... what we meant in going for those red-coats was this: we always had governed ourselves, and we always meant to. They didn't mean we should."

In general, our legal tradition grows out

of the English tradition. But no English judge can say from the bench, as an American judge may say: "The law on the books says thus-and-so; but in spite of the fact that the legislature passed it in due form, this law is void—it is unconstitutional and therefore no law at all."

The English constitution has remained unwritten; it was, and still is, a mass of precedents, and of rules drawn from them. But in America the colonists got used to something else: the idea of one *written* agreement as the basis of government. In 1606 a charter from King James I outlined a plan of government for settlers in Virginia. Before the Pilgrims landed in 1620, they drew up the Mayflower Compact for themselves, with a solemn promise to make and obey "just and equal Laws" for the general good. Royal and proprietary colonies alike had their written charters.

THE COLONISTS came to think of these documents as sharing the sanctity of natural law, the supremacy of natural rights, the solidarity of human society. They were thinking of their charters as we think of our Constitution. Increasingly, many colonists came to regard Parliament's laws on colonial affairs as unjust, even tyrannical. They appealed to the principles of a higher law, which could nullify even Acts of Parliament. Finally, they appealed to arms—they fought the Revolution.

War brought victory; peace brought trouble. America's first constitution, the "Articles of Confederation and perpetual Union," set up a "firm league of friendship," a government so simple it didn't work. Each state kept its "sovereignty, freedom and independence," and every power not expressly given to Congress. That Congress, one house in which each state had one vote, had to rely on the states for soldiers or money or law enforcement. Often the states didn't cooperate.

Distressed, George Washington saw that the country had "thirteen heads, or one head without competent powers." John Jay warned in 1783 that Europe watched "with jealousy, and jealousy is seldom idle"—weakness at home might tempt assault from abroad. The states squabbled among themselves over trade; in 1786 James Madison wrote gloomily to Thomas Jefferson about the "present anarchy of our commerce." Protests grew sharper, until Congress reluctantly called for a convention to meet in Philadelphia in May, 1787, "for the sole and express purpose of revising the Articles of Confederation."

The delegates straggled in, elected Washington to preside, and with great courage and good sense disobeyed their instructions. They went to work to create a new government—"a *national* government . . . consisting of a *supreme* Legislative, Executive and Judiciary." Their splendid disobedience produced the Constitution of the United States. It was not the Articles they revised, it was the future.

They invented something new, a plan for power the world had never seen before, an intricate system with both the states and the central government dealing directly with the people.

After long angry debates they compromised on a new kind of Congress, with two houses. After more wrangles they accepted the idea of an executive, a President. Without any argument at all the delegates

"**THE LAW, WHEREIN, AS IN A MAGIC MIRROR,** *we see reflected not only our own lives," noted Oliver Wendell Holmes, Jr., "but the lives of all men that have been!" Visitors stand at the threshold of the Nation's citadel of law, the Supreme Court. The dome of the Capitol rises in the west.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH J. SCHERSCHEL © N.G.S.

accepted the proposal for a Supreme Court. They agreed on the kinds of cases courts of the United States should try; when they disagreed over details for the lower courts, they left the matter up to the new Congress.

Soberly, for a long time, they thought about the most important problem of all. The country's simple government under the Articles had not worked well. Now the delegates were offering a complicated arrangement with many more points to quarrel about—who should make the final decision in disputes about the Constitution?

TO THIS QUESTION the delegates gave no final answer. But they adopted a sentence to make an answer possible: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the Supreme Law of the Land...."

Angry debates and even brawls accompanied the immediate question: Should the people accept this new system? Patrick Henry spoke the fears of many when he cried, "it squints towards monarchy. Your President may easily become King."

And where was a bill of rights? Most of the states had one in their own constitutions, and saw dangers in a document that failed to provide a list of liberties. Pamphlets came thick and fast. Some cried:

That the convention in great fury
Have taken away the trial by jury;
That liberty of press is gone,
We shall be hang'd, each mothers son....

For months the issue was uncertain, because nine of the original 13 states had to ratify the Constitution before it would become law. But by June 21, 1788, the ninth —New Hampshire—had acted.

In the First Congress, James Madison led in drafting amendments to protect the freedom and rights of the people; the states approved them promptly, and, by December 15, 1791, the Bill of Rights was in force.

Now a "more perfect Union" replaced the faltering "league of friendship," and the new nation began its great experiment of liberty under the law. In time, the Supreme Court became the interpreter of the supreme law of the land—not because the delegates provided that it must, but because things worked out that way.

Associate Justice William J. Brennan, Jr., says: "... the Founding Fathers knew better than to pin down their descendants too closely. Enduring principles rather than petty details were what they sought to write down. Thus it is that the Constitution does not take the form of a litany of specifics."

And so disputes over its meaning have continued. But Chief Justice John Marshall declared: "It is emphatically the province and duty of the judiciary department to say what the law is." He warned: "We must never forget that it is a *constitution* we are expounding... intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs."

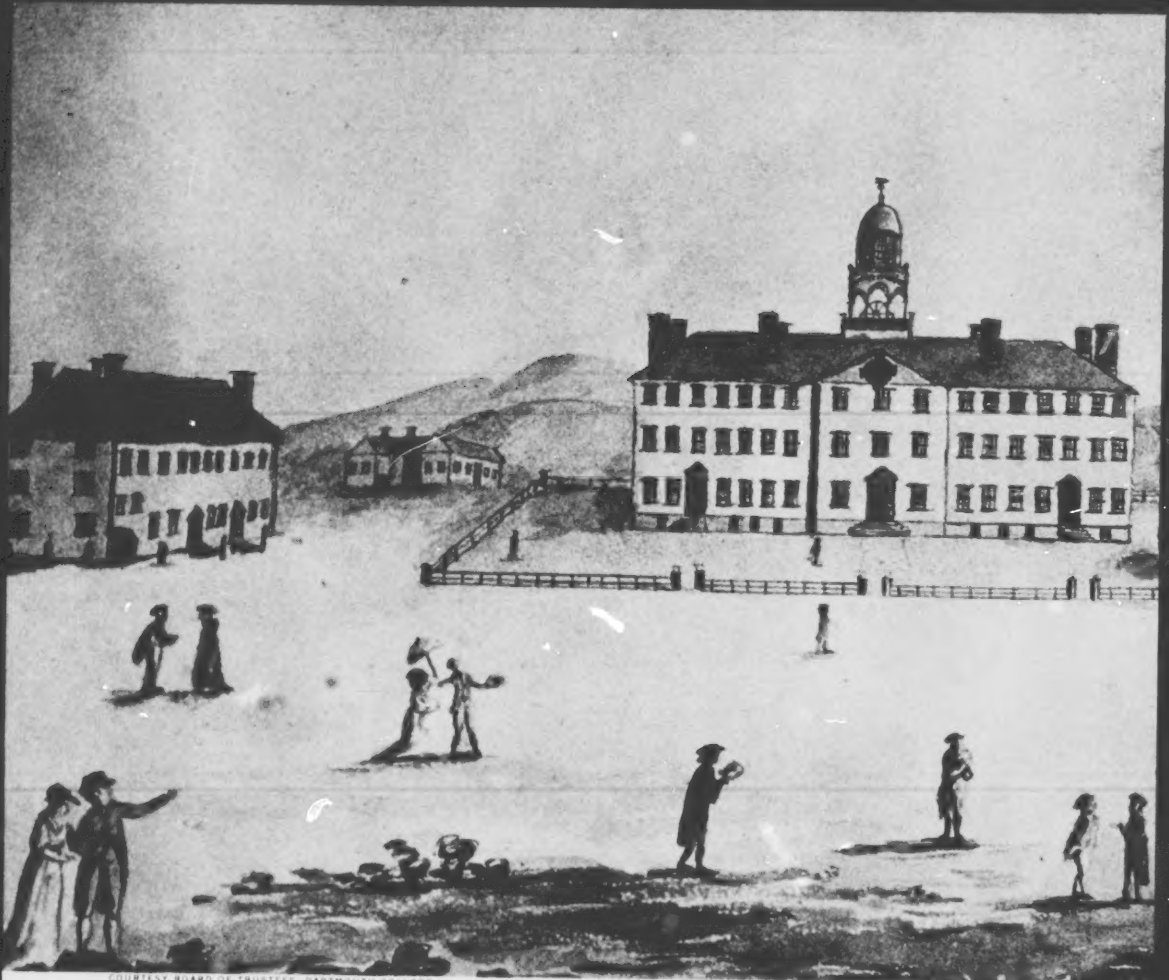
Charles Evans Hughes, who would become Chief Justice himself, stated the Court's responsibility more bluntly in 1907: "We are under a Constitution, but the Constitution is what the judges say it is."

So the Judges find its words "loaded," as Associate Justice Byron R. White says today. For more than a century the Court has been deciding cases that twine about a single statement, Congress shall have the power to regulate commerce among the several states. On four simple words, "due process of law," the Court has written volumes.

Still, in dealing with constitutional problems, the Court is free to change its mind. Justices have overruled their predecessors and themselves, to correct a decision in the light of experience. They sit as "a kind of Constitutional Convention in continuous session," said Woodrow Wilson. Their

RARE INFORMAL PORTRAIT *shows members of the Court in the paneled and pilastered East Conference Room. From left: Associate Justices Harry A. Blackmun, Potter Stewart, Lewis F. Powell, Jr., Thurgood Marshall, William H. Rehnquist, Byron R. White, William O. Douglas, Chief Justice Warren E. Burger, Associate Justice William J. Brennan, Jr. Scrupulous in observing the proprieties of their office, the Justices seldom pose so casually. Rembrandt Peale's famous "porthole portrait" of Chief Justice John Marshall hangs above them.*

ROBERT S. OAKES, NELSON H. BROWN, © N.G.S.



COURTESY BOARD OF TRUSTEES, DARTMOUTH COLLEGE

changing views have helped make the Constitution meet the needs of each successive generation. But again and again they have stirred up wrath and controversy.

Before he became Associate Justice, Robert H. Jackson pointed out that Supreme Court Justices derive their offices from the favor of Presidential appointment and Senate confirmation. And they are "subject to an undefined, unlimited, and unreviewable Congressional power of impeachment.... Certainly so dependent an institution would excite no fears...."

And yet, he said, "this Court has repeatedly overruled and thwarted both the Congress and the Executive. It has been in angry collision with the most dynamic and popular Presidents in our history. Jefferson retaliated with impeachment; Jackson denied [the Court's] authority; Abraham Lincoln disobeyed a writ of the Chief Justice;... Wilson tried to liberalize its membership; and Franklin D. Roosevelt proposed to 'reorganize' it."

You feel this timeless epic when you stand in the empty Courtroom today. Here the voices of famous lawyers seem to come out of the stillness—John Quincy Adams, formidable and old; Henry Clay, taking a pinch from the Judges' snuffbox; Daniel Webster, in his legendary tribute to his alma mater, Dartmouth—"a small college, and yet there are those who love it."

Here is great drama—a Dred Scott case inflaming the passions of a nation. And an attorney, mortally ill, who left a hospital bed to address the Court, then mustered strength to write thanking the Justices for their courtesy before he died the next day.

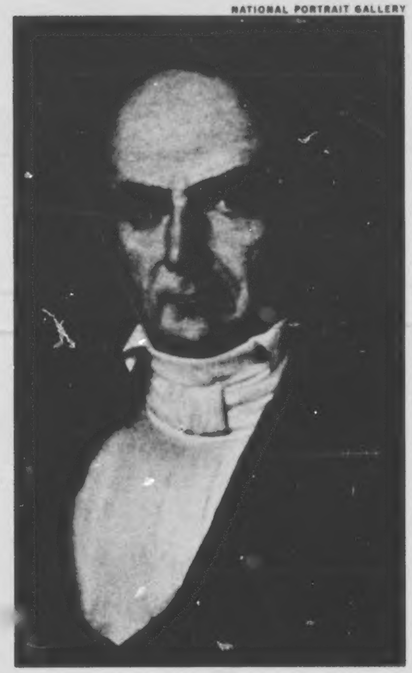
Here is intense emotion—Justice James M. Wayne during the Civil War years speaking for the Union when his state and his

family disowned it. And a young lawyer standing wordless at three invitations to begin, finally managing to say, "Mr. Chief Justice, may I have a minute to compose myself? I'm scared to death."

Here are nine Judges whose Court is the arbiter of the American government—the umpire of the federal system. Their decisions represent a majority, if not all, of the members, but their awesome responsibility falls in the end on individual shoulders. As the late Associate Justice John Marshall Harlan explained: "Under his oath, each member of the Court must decide each case as if he were its only judge."

Here, in the richness of its past, the strong and clashing forces it must meet, the mystery it must foresee, is the most sedate and yet most dramatic of all the elements of government. Here, in short, is the Supreme Court of the United States.

NATIONAL PORTRAIT GALLERY

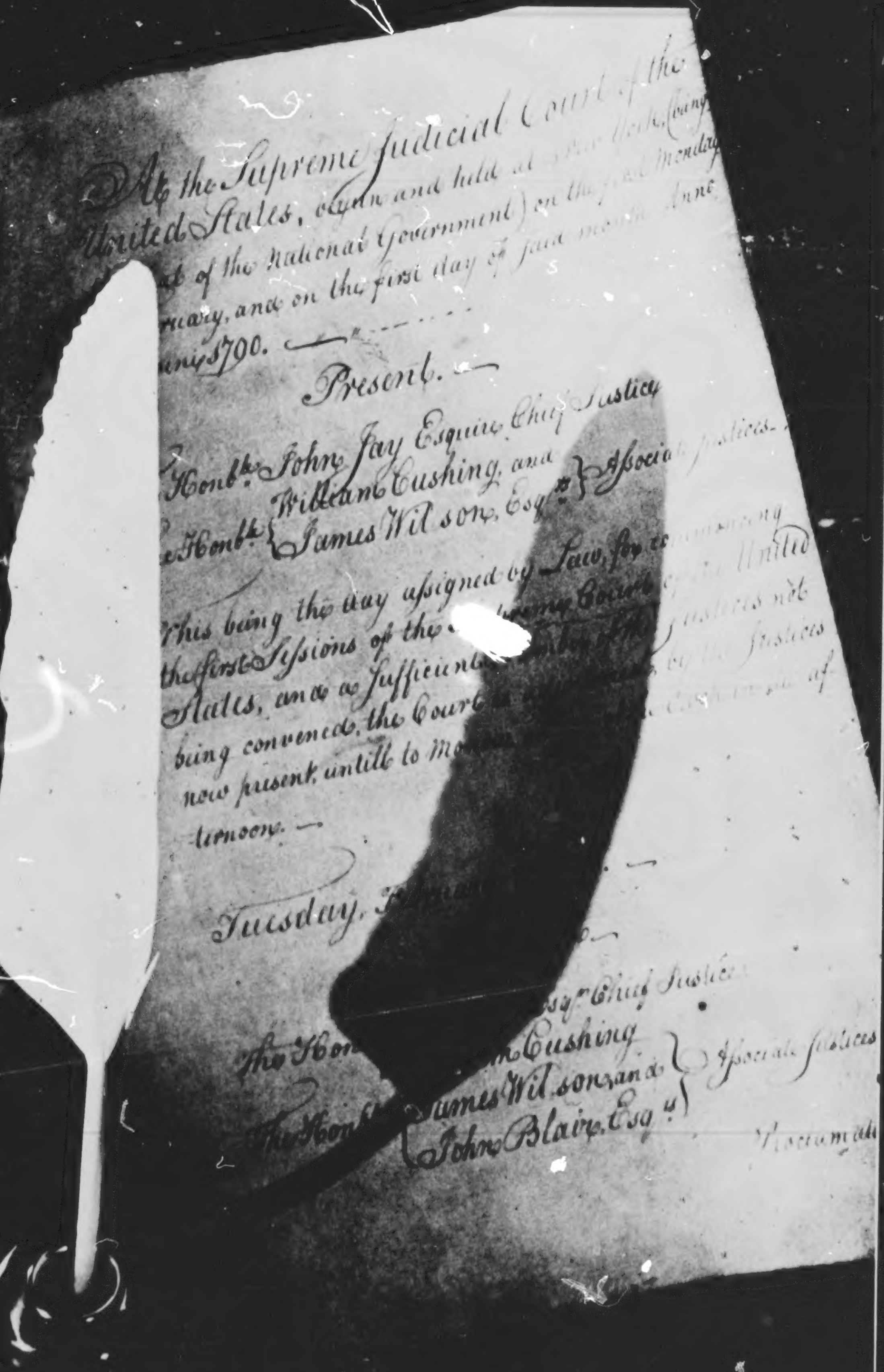


THUNDEROUS ORATOR, *lawyer Daniel Webster argued the Dartmouth College case before the Supreme Court and won a landmark decision that protected private property rights and encouraged growth of business corporations in all branches of commerce and industry.*

When the Justices decided this case, they were performing the continuing function of the Court—to interpret the Constitution and to define the law of the land.

Every citizen has been affected by opinions of the Court since the early days of the Republic. "It passes on his property, his reputation, his life, his all," said Chief Justice John Marshall, who heard the Dartmouth College case.

Residents of Hanover, New Hampshire, stroll before Dartmouth Hall in this 1803 drawing (above left). When the state tried to turn Dartmouth from a privately owned college into a state university, the college filed suit and retained Webster, whose argument became legend. "The question is simply this," he contended: "Shall our state legislature be allowed to take that which is not their own . . . ?" No, said the Supreme Court, when it held for the first time that a charter of incorporation is a contract which no state has constitutional power to impair.



At the Supreme Judicial Court of the
United States, begun and held at New York, (being
[illegible] at of the National Government) on the first Monday
[illegible] ruary, and on the first day of said month Anno
[illegible] ini 1790. —

Present. —

[illegible] Honble. John Jay Esquire Chief Justice
[illegible] Honble. { William Cushing, and
James Wilson, Esqrs. } Associate Justices. —

This being the day assigned by Law, for commencing
the first Sessions of the [illegible] Court of the United
States, and a sufficient [illegible] of the Justices not
being convened, the Court [illegible] by the Justices
now present, untill to Mo[illegible] [illegible] af-
ternoon. —

Tuesday. [illegible] [illegible] o. —

The Hon[illegible] [illegible] Esqr. Chief Justice
The Hon[illegible] [illegible] m Cushing
The Honble. { James Wilson, and
John Blair, Esqrs. } Associate Justices

Proclamati

Decisions for Liberty

WHENEVER JUDGES, lawyers, and legal scholars gather and the talk turns to the Constitution and the men who made it the law we live by, one name inevitably enters the conversation: John Marshall of Virginia.

"My gift of John Marshall to the people of the United States was the proudest act of my life," said John Adams, the second President, years after he left office.

Adams not only chose Marshall for Chief Justice in 1801, he forced a reluctant Senate to confirm the appointment. He had every right to be proud.

Marshall asserted the Court's mightiest power and dignity in its first great crisis. His decisions set the course for a bold venture —a new republic's voyage to greatness among the nations of the world. Those decisions, and many that followed, mirror the history of the Supreme Court and, indeed, of the Republic itself. At the Court today Justices and others still speak of Marshall as the "great Chief."

The Constitution called for a Supreme Court and a federal judiciary, but left it to Congress to spell out the details. Congress did so in the Judiciary Act of 1789. Connecticut's Oliver Ellsworth—later to serve four years as Chief Justice—led the drafting in committee. This law created 13 district courts, with one judge apiece, and three circuit courts, eastern, middle, southern. Above these it set the Supreme Court, with a Chief Justice and five Associates.

For the first Chief Justice, President Washington picked John Jay, New York-born statesman and diplomat. The President weighed sectional jealousies and personal ability in selecting Associate Justices —John Blair of Virginia, William Cushing of Massachusetts, James Wilson of Pennsylvania, James Iredell of North Carolina, and John Rutledge of South Carolina. All had helped establish the Constitution.

But only three of the Judges had reached New York, a temporary capital city, in 1790, when the Court convened for the first time. Required by law to sit twice a year, it began its first term with a crowded courtroom and an empty docket. Appeals from lower tribunals came slowly; for its first three years the Court had almost no business at all.

Spectators at early sessions admired "the elegance, gravity and neatness" of Justices' robes. But when Cushing walked along New York streets in the full-bottom professional wig of an English judge, little boys trailed after him and a sailor called, "My eye! What a wig!" Cushing never wore it again.

In 1791, the Court joined Congress and the President at Philadelphia; it heard discussions of lawyers' qualifications, but little else. Still, other duties exhausted the Justices. The Judiciary Act of 1789 required them to journey twice a year to distant parts of the country and preside over circuit courts. For decades they would grumble, and hope Congress would change this system; but Congress meant to keep them aware of local opinion and state law.

Stagecoaches jolted the Justices from city to city. Sometimes they spent 19 hours a day on the road. North of Boston and in the South, roads turned into trails. Justice Iredell, struggling around the Carolinas and Georgia on circuit, and hurrying to Philadelphia twice a year as well, led the life of a traveling postboy. Finding his duties "in a degree intolerable," Jay almost resigned. Congress relented a little in 1793; one circuit trip a year would be enough.

Sensitive issues appeared in some of the Court's first cases. Its decision in *Chisholm*

FIRST OFFICIAL RECORD *of the Court contains an error in the first line—the word "Judicial." Authorities think the Clerk, a Massachusetts man, inserted it because the highest tribunal in his state was the "Supreme Judicial Court." The National Archives, custodian of such papers, has lent this document to the Court for public display.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH J. SCHERSCHEL © N.G.S.

v. *Georgia* shocked the country. During the Revolution, Georgia had seized property from men loyal to the Crown. With a pre-Revolution claim on such an estate, two South Carolinians asked the Court to hear their suit against Georgia. It agreed, saying the Constitution gave it power to try such cases. But when the day for argument came in 1793, Georgia's lawyers did not appear. The Court gave its decision anyway, in favor of the South Carolinians.

Georgia raged; other states took alarm. They were trying to untangle finances still snarled from the war. If they had to pay old debts to "Tories" they might be ruined. They adopted the Eleventh Amendment, forbidding any federal court to try a lawsuit against a state by citizens of some other state. Thus the people overruled the Supreme Court for the first time, and established a far-reaching precedent of their own. They would give the ultimate decision on constitutional disputes.

War between Britain and France brought two more basic precedents. President Washington was working desperately to keep the United States neutral and safe; he sent the Court 29 questions on international law and treaties, and begged for advice. The Justices politely but flatly refused to help. Under the Constitution, they said, they could not share executive powers and duties, or issue advisory opinions.

To this day, the Supreme Court will not give advice; it speaks only on the specific cases that come before it.

But by its decision in *Glass* v. *Sloop Betsy,* in 1794, the Court did defend neutral rights and national dignity.

Defying the President's neutrality proclamation, French privateers were bringing captured ships into American ports. There French consuls decided if the ships were to be kept as lawful prize.

Betsy, Swedish-owned, had American cargo aboard when the French raider *Citizen Genet* caught her at sea and took her to Baltimore. Alexander S. Glass, owner of a share of the cargo, filed suit for his goods, but the district court in Maryland ruled that it could not even hear such cases.

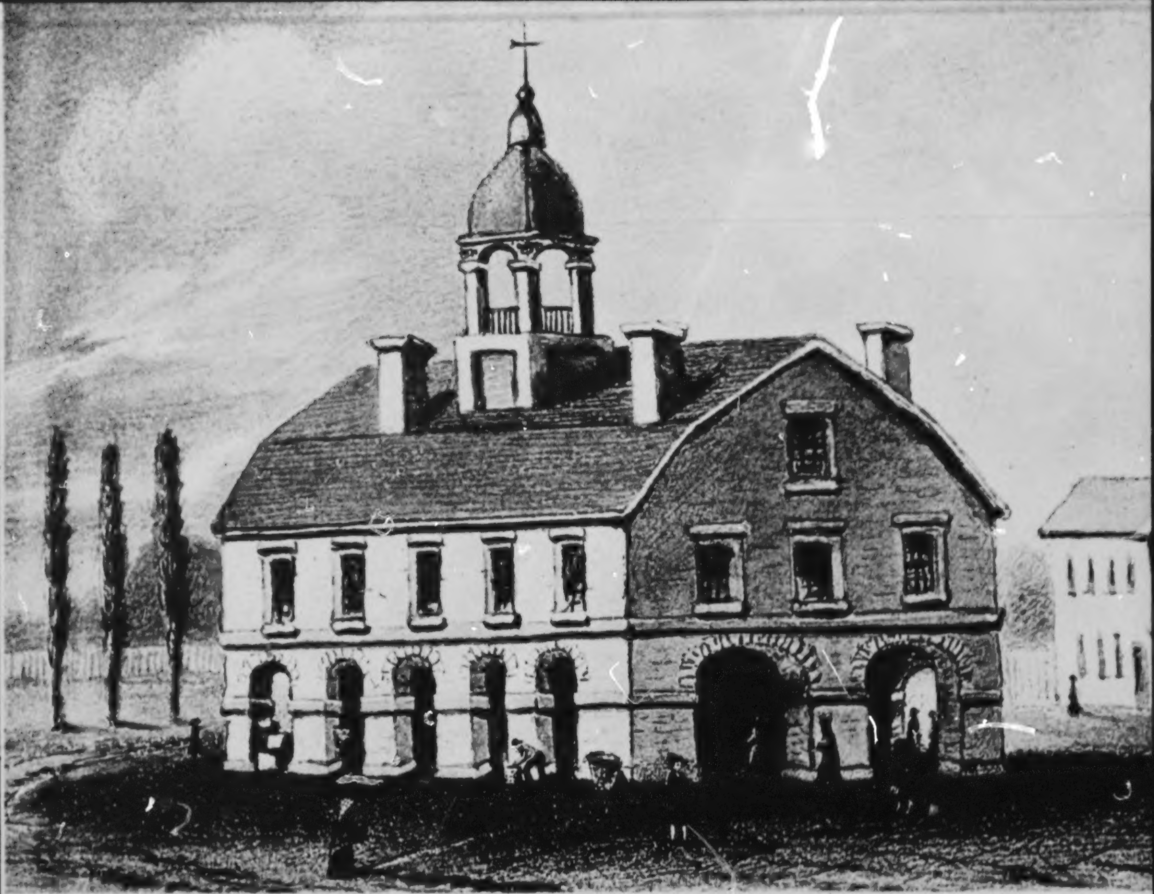
With the prestige of the country at stake, the government quickly appealed to the

FIRST CHIEF JUSTICE, *John Jay opened the initial session of the Supreme Court on February 1, 1790. President George Washington had named the 43-year-old New York lawyer to head the highest tribunal in the land after Congress had set the number of Justices at six in 1789.*

"He was remarkable for strong reasoning powers, comprehensive views, indefatigable application, and uncommon firmness of mind," said one of Jay's friends. The Federalist statesman set lasting standards of judicial excellence during five years of service as Chief Justice. Jay's Court established an all-important precedent by refusing to advise the President on matters of law; to this day, the Court speaks only on specific cases that come before it for review.

At Washington's request, Jay, still Chief Justice, embarked upon a famous diplomatic mission to Great Britain in 1794 to settle quarrels over British troops in the Northwest and private debts to British creditors. The treaty that Jay negotiated preserved the peace when war might well have destroyed the new Nation.

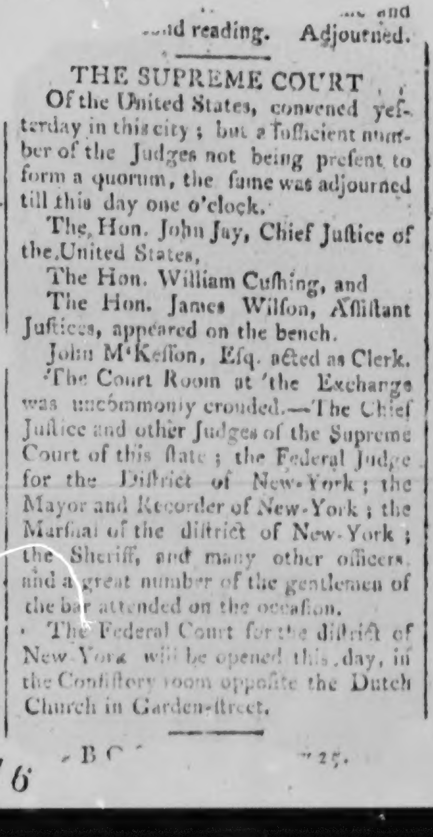
Jay resigned as Chief Justice in 1795 and became Governor of New York, serving for two terms. His tenure on the bench launched a tradition of high-minded dignity that continues to distinguish the Supreme Court.



EMMETT COLLECTION, NEW YORK PUBLIC LIBRARY (ABOVE), AND RARE BOOKS, LIBRARY OF CONGRESS

CUPOLA-CROWNED *Royal Exchange in New York City housed the first meeting of the Supreme Court. Justices deliberated on the second floor of the gambrel-roofed hall. A brick arcade shades the ground floor, an open-air market where Broad and Water Streets intersect. During the first term the Judges appointed a court crier and a clerk, and admitted lawyers to the bar, but heard no cases. After two sessions here, the Court reconvened in Philadelphia, the national capital until 1800.*

"UNCOMMONLY CROUDED," *reports the* New York Daily Advertiser *(right) of the scene at the Supreme Court's scheduled opening: curious spectators had to wait until the next day to see the Court formally convened. Widely reprinted, such accounts described the "novel experiment of a National Judiciary" for readers throughout the states. Last paragraph cites new location of the federal court that moved out of the Exchange to make room for the Justices.*



and

d reading. Adjourned.

THE SUPREME COURT

Of the United States, convened yeſterday in this city; but a ſufficient number of the Judges not being preſent to form a quorum, the ſame was adjourned till this day one o'clock.

The Hon. John Jay, Chief Juſtice of the United States,

The Hon. William Cuſhing, and

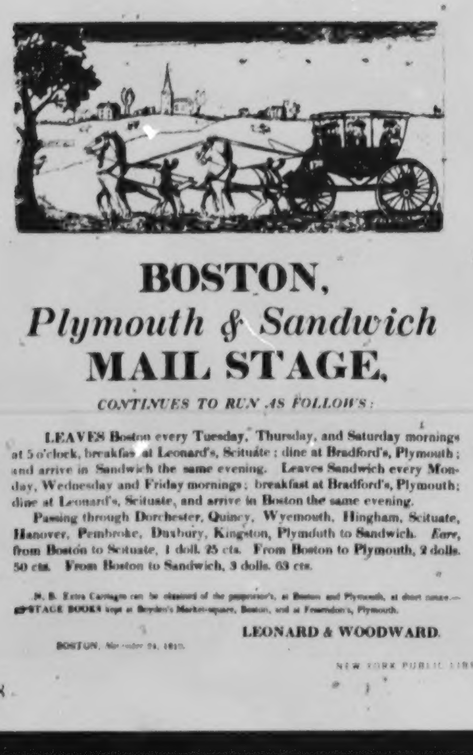
The Hon. James Wilſon, Aſſiſtant Juſtices, appeared on the bench.

John M'Keſſon, Eſq. acted as Clerk.

The Court Room at the Exchange was uncommonly crouded.—The Chief Juſtice and other Judges of the Supreme Court of this ſtate; the Federal Judge for the Diſtrict of New-York; the Mayor and Recorder of New-York; the Marſhal of the diſtrict of New-York; the Sheriff, and many other officers, and a great number of the gentlemen of the bar attended on the occaſion.

The Federal Court for the diſtrict of New-York will be opened this day, in the Conſiſtory room oppoſite the Dutch Church in Garden-ſtreet.

B C 25.



BOSTON,
Plymouth & Sandwich
MAIL STAGE,
CONTINUES TO RUN AS FOLLOWS:

LEAVES Boston every Tuesday, Thursday, and Saturday mornings at 5 o'clock, breakfast at Leonard's, Scituate; dine at Bradford's, Plymouth; and arrive in Sandwich the same evening. Leaves Sandwich every Monday, Wednesday and Friday mornings; breakfast at Bradford's, Plymouth; dine at Leonard's, Scituate, and arrive in Boston the same evening.

Passing through Dorchester, Quincy, Weymouth, Hingham, Scituate, Hanover, Pembroke, Duxbury, Kingston, Plymouth to Sandwich. *Fare,* from Boston to Scituate, 1 doll. 25 cts. From Boston to Plymouth, 2 dolls. 50 cts. From Boston to Sandwich, 3 dolls. 63 cts.

N. B. Extra Carriages can be obtained of the proprietor's, at Boston and Plymouth, at short notice.—☞STAGE BOOKS kept at Boyden's Market-square, Boston, and at Fessenden's, Plymouth.

LEONARD & WOODWARD.

BOSTON, November 24, 1810.

NEW YORK PUBLIC LIBRARY

*"**CIRCUITS PRESS HARD** on us all," moaned Chief Justice John Jay. A 1789 Act of Congress, requiring Supreme Court jurists to preside twice a year over circuit courts scattered throughout the Union, meant months of rugged travel.*

Broadside (left) depicts one common mode of transportation. After jolting in a stagecoach many hours daily over savage roads of ruts and rocks or helping lift the stagecoach from quagmires of mud, the Justices passed restless nights in crowded way stations such as Fairview Inn on the Frederick road (above) near Baltimore, Maryland.

Battered and exhausted by the rigors of travel, Judges often arrived at the circuit courts too late or too sick to hold a session. Still, their visits served to acquaint the people with the new judiciary branch.

FROM THE COLLECTIONS OF THE MARYLAND HISTORICAL SOCIETY (ABOVE) AND LIBRARY OF CONGRESS

TATTERED *knee breeches of John Marshall, the Nation's fourth Chief Justice, reveal his lifelong habit of bedraggled dress. But his speech was always persuasive, his genial charm unfailing, in a courtroom or out of it. Here, at a Virginia tavern during his circuit-riding days, he holds dapper young lawyers spellbound for nearly an hour. One traveler said that to try to describe Marshall's eloquence "would be an attempt to paint the sunbeams." Injuries suffered in a stage-coach crash while on circuit hastened his death.*

Supreme Court. Not foreign consuls but federal courts would decide American claims, the Justices ruled. Europe heard this decision; and the United States became, as Washington hoped, "more respectable."

OLD DEBTS AND GRUDGES were troubling relations between the United States and Great Britain. President Washington sent Chief Justice Jay to London as a special minister to settle the quarrels, and Jay negotiated a treaty. When he returned New York elected him Governor, and he resigned from the Court.

To succeed him Washington chose John Rutledge; the Senate rejected the nomination. Patrick Henry, now an old man, declined to serve, and Oliver Ellsworth became Chief Justice.

The Jay Treaty infuriated Americans who thought it too favorable to Britain. Feeling still ran high in 1796 as the Court reviewed the case of *Ware* v. *Hylton*. Many British subjects had claims against Americans from contracts made before the Revolution; some states had canceled these by law, but treaty provisions required their payment.

In his only argument before the Supreme Court, John Marshall defended a Virginia law abolishing payments to British creditors; he lost. A treaty of the United States must override the law of any state, ruled the Justices. When the Nation pledges its word, it must keep faith—and the Nation speaks with one voice, not with 13, not with 50.

But two raucous choruses were shouting abuse at each other when the Court met at Philadelphia for the last time, in August,

1800. The government was moving to a new site by the Potomac, where no one had even planned a judiciary building. In 1801 Congress loaned the Court a little ground-floor room in the unfinished Capitol; it crowded the Justices for seven years.

Changing capitals was easier than changing the government. With vast excitement, the people were tussling with an issue the Constitution ignored; painfully, nervously, they were working out a two-party system.

Against the Federalists, "the good, the wise, and the rich," the party of Washington and Adams, stood the admirers of Vice President Thomas Jefferson—"the Man of the People." Calling themselves Republicans, the Jeffersonians wanted to give the people more of a voice in government; they praised the ideals of the French Revolution, they had nothing but distrust for Britain.

During John Adams's term as President, the French insulted the administration from abroad and the Republicans criticized it at home. Federalists had run the new government from the first. They feared attacks on themselves as attacks on the new Constitution. Hearing French accents in every critical sentence, they passed the Sedition Act of 1798.

This law endangered anyone who spread "false, scandalous and malicious" words against the government or its officers, to "bring them . . . into contempt or disrepute." It would expire with Adams's term of office on March 3, 1801.

"Finding fault with men in office was already an old American custom," writes one historian; "indeed, it had become an

FRENCH FRIGATE L'Embuscade *sails past the Battery of New York City in this contemporary engraving. During President Washington's Administration, French raiders roamed off American coasts, seized merchant ships, and took them into port for French consuls to decide if they were lawful prize. This practice defied the authority of the United States and its right to maintain neutrality in the war between France and Britain. When the French privateer* Citizen Genet *(below left) captured a Swedish ship with American cargo, a federal district judge held that his court had no jurisdiction in the matter. By its 1794 decision in the case* **Glass v. Sloop Betsy,** *the Supreme Court declared that American courts would decide all cases within the American domain.*

NEW YORK PUBLIC LIBRARY (LEFT) AND LISA BIGANZOLI, NATIONAL GEOGRAPHIC STAFF © N.G.S.

WILLIAM R. BIRCH, LIBRARY OF CONGRESS (ABOVE AND UPPER RIGHT)

essential part of the pursuit of happiness."

Supreme Court Justices presided at trials on circuit and sent Republican journalists to jail for sedition. But the Republicans kept on criticizing, and shouting "Tyranny!" The Federalists answered with furious cries of "Treason!"

In the 1800 elections the "Lock Jaw" Federalists were routed—"Mad Tom" Jefferson would be President, his followers would control Congress.

Gloomily, the Federalists hoped that judges could save the Constitution from these "radicals." Chief Justice Ellsworth was ailing; he resigned. Jay refused to serve again. So Adams gave his Secretary of State, John Marshall, to the Supreme Court. In Congress, the lame-duck Federalists passed a law to reduce the Court's membership to five (one less Justice for a Republican President to name). Abolishing circuit duties for the Justices and providing other reforms, this law set up new circuit courts with 16 judges. Adams quickly made his appointments—the famous "midnight judges."

Enraged, one Republican from Kentucky called Adams's tactics "the last effort of the most wicked, insidious and turbulent faction that ever disgraced our political annals."

Jefferson took his oath of office on March 4, 1801. Without precedents and with passions running high, the Presidency and the

HOMES OF THE COURT: *Philadelphia's Independence Hall (left) sheltered the Judges for two days in 1791—all they needed for their February term. In August they met in Old City Hall (above, with cupola), which served them for a decade. Their first session in Washington, D. C., came in 1801.*

JOE COVELLO, BLACK STAR

MEMENTOS OF JAY: *The Chief Justice, a devoted student of astronomy, brought the celestial globe from England in 1795 after signing the Jay Treaty. His spectacles lie on a 1670 edition of Cicero that young Jay used at Kings College, forerunner of Columbia University. He wrote his name on the title page. A Sèvres inkwell stands at right. The State of New York preserves these and other family relics at the John Jay Homestead near Katonah.*

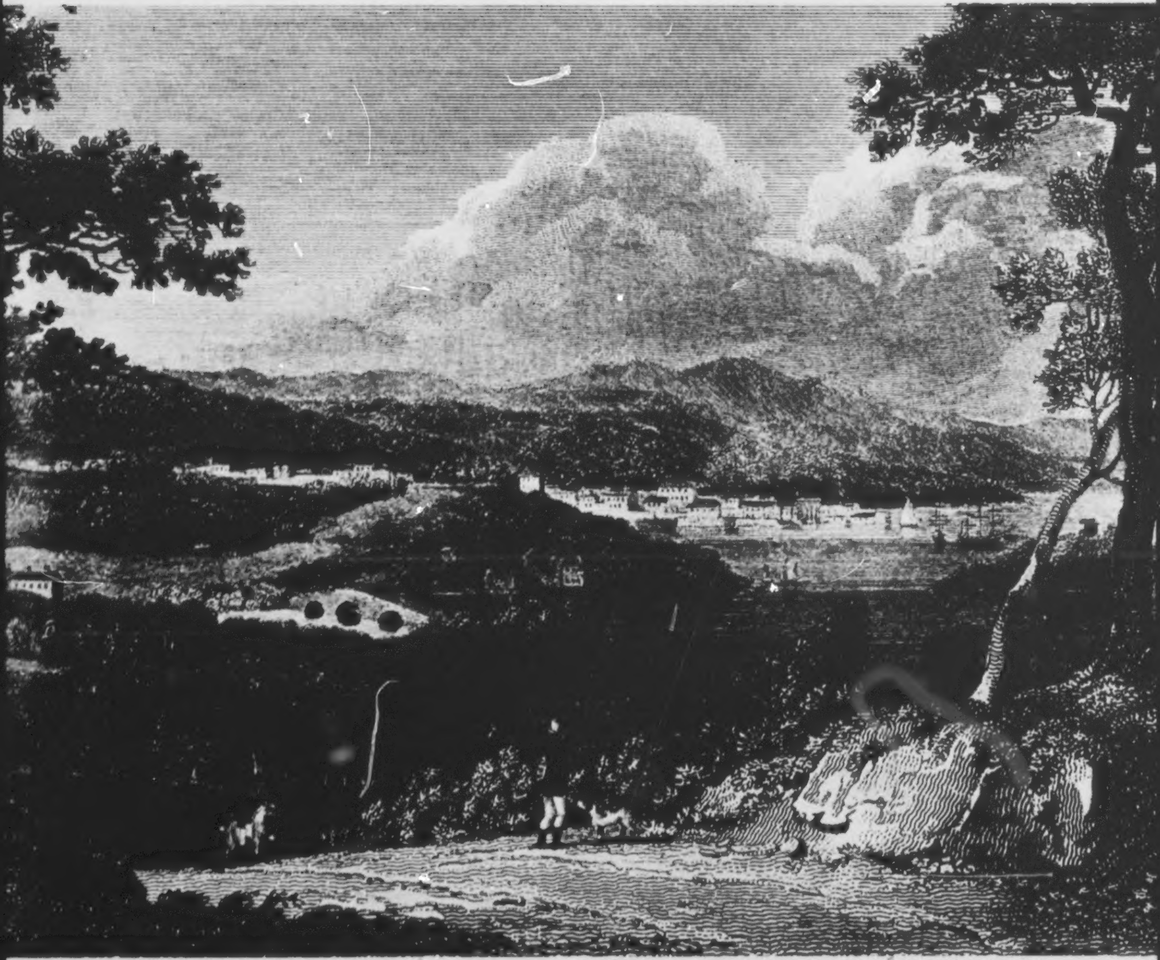
Congress passed for the first time from one party to another. And some citizens were afraid that the judiciary was in mortal danger.

Soon after his Inauguration, Jefferson wrote that the Federalists had "retreated into the judiciary as a stronghold, the tenure of which renders it difficult to dislodge them."

But the Republicans repealed the lame-duck Judiciary Act, while horrified Federalists lamented, "the Constitution has received a wound it cannot long survive," and "the angels of destruction . . . are making haste."

Meanwhile, William Marbury of Washington went straight to the Supreme Court, looking for a commission as justice of the peace for the District of Columbia. Adams had appointed 42 such officials, the Senate frantically confirmed them, and Adams sat at his desk until late on his last night in office to sign their commissions. Then a messenger rushed the papers to the State Depart-

"**HILLS, VALLEYS,** *morasses and waters," said Thomas Jefferson of the site chosen for Washington, here depicted in 1800. Stone bridge (center) spans Rock Creek near Georgetown (left). In background at right rises Jenkins Hill, where the Capitol stands today. The Senate and the House shared the old North Wing (below), first structure of the Capitol, with the Supreme Court. Here the Justices met in various rooms from 1801 until 1935. During the early years when construction displaced the Judges, they had to meet in nearby homes.*



WILLIAM R. BIRCH, LIBRARY OF CONGRESS (LEFT), AND KIPLINGER COLLECTION

ment for Marshall, still acting as Secretary, to affix the great seal of the United States. In the confusion some of the commissions went undelivered, Marbury's among them.

In December, 1801, Marbury applied to the Court for a writ of mandamus ordering James Madison, the new Secretary of State, to give him his commission. The Court agreed to hear the case—a bold action, for rumor was saying the Justices "must fall" by impeachment. Then the Republican Congress passed a law stopping the Court's sessions for 14 months: another threat. When the Justices finally sat again in 1803, they heard argument in Marbury's case.

If the Court ordered Madison to produce that commission, he could simply ignore the order; President Jefferson would defend him. If the Court denied Marbury's right to his commission, Jefferson could claim a party victory. Either way the Court's prestige—and perhaps its members—must fall.

Marshall found an escape from this dilemma. He announced the decision on February 24, and proclaimed the most distinctive power of the Supreme Court, the power to declare an Act of Congress unconstitutional. Point by point he analyzed the case. Did Marbury have a legal right to his commission? Yes. Would a writ of mandamus enforce his right? Yes. Could the Court issue the writ? *No.*

Congress had said it could, in the Judiciary Act of 1789. It had given the Court an original jurisdiction in such cases—power to try them for the first time. But, said Marshall triumphantly, the Constitution defined the Court's original jurisdiction and Congress could not change it by law. Therefore that section of the law was void.

The Court had issued such writs before, but Marshall ignored the fact. He declared for all time the supremacy of the Constitution over any conflicting law. Other judges had said as much, but Marshall added: "It is, emphatically, the province and duty of the judicial department, to say what the law is."

In renouncing a minor jurisdiction he asserted a great one, perhaps the greatest in the long annals of the law. The Supreme Court's power as interpreter of the Constitution rests on this precedent to this day.

A few days after the decision in *Marbury* v. *Madison*, the Court amazed the Jeffersonians again. They had passed a Judiciary Act of their own, restoring the Court's old membership and circuit duties. The Justices ruled that it was constitutional, and for a while talk of impeachment died down.

"OYEZ! OYEZ! OYEZ!... the grand inquest of the nation is exhibiting to the Senate... articles of impeachment against Samuel Chase, Associate Justice...." The Supreme Court was on trial; if Chase fell, Marshall might be next.

Feared as a "ringleader of mobs, a foul mouthed and inflaming son of discord" when he led the Sons of Liberty in 1765, Chase "was forever getting into some... unnecessary squabble" as a Judge 40 years later. He campaigned openly for Adams. On circuit he tried Republicans without mercy. In 1803 he told a Baltimore grand jury that "modern doctrines" of "equal liberty and equal rights" were sinking the Constitution "into a mobocracy, the worst of all popular governments."

His enemies saw their chance. The House of Representatives voted to bring him before the Senate for trial, charging that his partisan behavior—in and out of court—amounted to "high Crimes and Misdemeanors" under the Constitution.

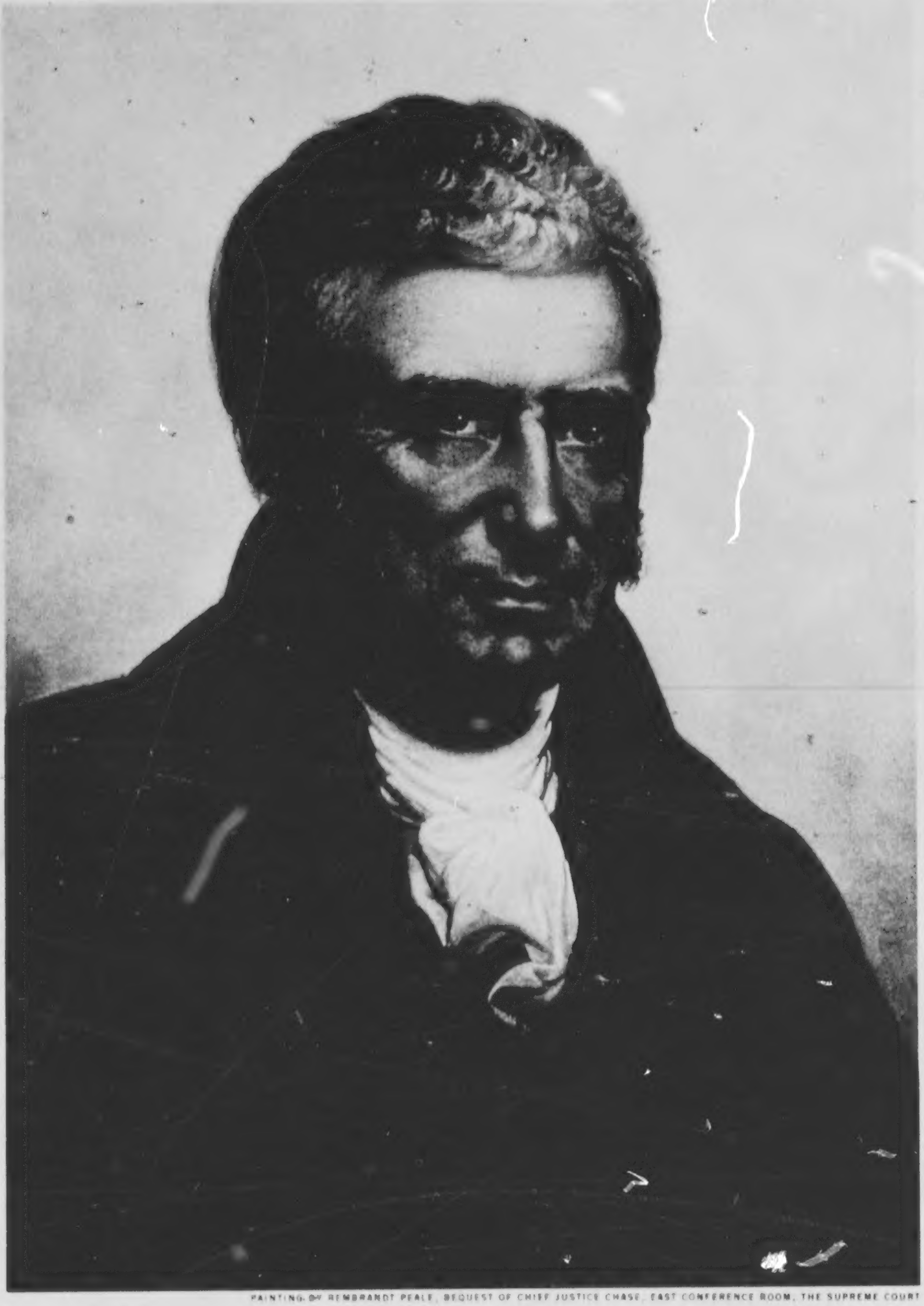
Vice President Aaron Burr had arranged a special gallery for ladies when the "grand inquest" opened on February 4, 1805. Burr had killed Alexander Hamilton in a duel and New Jersey wanted him for murder; but he presided sternly, rebuking Senators who were eating cake and apples. "We are indeed fallen on evil times," said one. "The high office of President is filled by an *infidel;* that of Vice-President by a *murderer.*"

Representative John Randolph of Roanoke, the brilliant, erratic Virginian, fought to prove Chase unfit for the Court. Luther Martin of Maryland, who could hold more law and more brandy than any other attorney of his time, led Chase's defense. Marshall and 51 other witnesses testified.

Amid "a vast concourse of people... and great solemnity," the Senators acquitted

LISA BIGANZOLI, NATIONAL GEOGRAPHIC STAFF © N.G.S.

ON HIS LAST NIGHT *in the White House, President John Adams (right) sits up signing commissions for men of his party, the Federalists, defeated in the 1800 elections. But some of the papers went undelivered, including one to make William Marbury of Washington a justice of the peace. The victorious party of Thomas Jefferson, the Republicans, angrily called Adams's appointees "midnight judges"; political passion ran high when Marbury tried to claim his office by filing suit in the Supreme Court against James Madison, the new Secretary of State. Chief Justice Marshall avoided an open clash with Congress and the President. He found that the Court had no jurisdiction to order Marbury's commission delivered; although the Judiciary Act of 1789 said it did, the court held that provision of the law null and void. Thus for the first time, in* **Marbury v. Madison,** *the Supreme Court exercised its power to declare an Act of Congress unconstitutional. This was not the first example of judicial review—the Court had upheld a federal law as valid in 1796—but it remains the classic precedent for the Supreme Court's role as final interpreter of the Constitution.*



PAINTING BY REMBRANDT PEALE, BEQUEST OF CHIEF JUSTICE CHASE, EAST CONFERENCE ROOM, THE SUPREME COURT

"**HIS BLACK EYES** . . . *possess an irradiating spirit, which proclaims the imperial powers of the mind that sits enthroned therein," a lawyer wrote of John Marshall, who posed for this portrait about a year before his death at 79. Still known as "the great Chief Justice," Marshall joined the Court in 1801 and presided for 34 years. The compelling force of his logic brought prestige to the judicial department. His far-sighted opinions, vitalizing the law to this day, helped mold the Nation by upholding the powers of the Union against claims for states' rights.*

Chase on March 1. Jefferson called impeachment of Justices "a farce which will not be tried again," and he was right.

For all his differences with the Republicans, John Marshall was no son of discord. Born in a log cabin near Germantown, Virginia, in 1755, he grew up near the frontier, with some tutoring for an education. He fought as an officer in the Revolution, almost freezing at Valley Forge.

After the war he practiced law, and became the leading Federalist of his state. As a young attorney and an aging Chief Justice, he was sloppily dressed and wonderfully informal out of court, fond of spending hours with friends in taverns, law offices, and drawing rooms. Even in his sixties, Marshall was still one of the best quoits players in Virginia.

When the Court met in Washington, the Justices stayed in a boardinghouse—the trip was too long, the session too short for their wives to accompany them—and Marshall's geniality brightened their off-duty hours.

Justice Joseph Story handed down a tale still told at the Court. On rainy days the Judges would enliven their conferences with wine; on other days Marshall might say, "Brother Story, step to the window and see if it doesn't look like rain." If the sun was shining, Marshall would order wine anyway, since "our jurisdiction is so vast that it must be raining somewhere."

Congress expanded that domain in 1807, creating a new circuit for Kentucky, Tennessee, and Ohio, and adding a seat to the Court. Jefferson appointed Thomas Todd, who had helped create the State of Kentucky out of his native Virginia.

LIFE IN WASHINGTON went on peacefully for months during the War of 1812. "Mrs. Madison and a train of ladies" visited the Supreme Court one day in early 1814, just as William Pinkney of Maryland, one of the country's most celebrated lawyers, was ending an argument; "he recommenced, went over the same ground, using fewer arguments, but scattering more flowers."

Rudely interrupting such diversions, the British arrived in August and burned the Capitol. Congress found shelter in the makeshift "Brick Capitol" where the Supreme Court Building stands today.

The Court, forced to shift for itself, met for a while in a house on Pennsylvania Avenue. Then it got temporary space in the Capitol. In 1819 it returned to its own semicircular room below the Senate Chamber.

"A stranger might traverse the dark avenues of the Capitol for a week," reported a visitor from New York, "without finding the

"I WAS . . . FLOORED," *says Marshall with dry humor as an attendant rushes to the sprawled Chief Justice, who fell from a stepladder in a law library. The mishap reveals Marshall's relish for a joke even at his own expense. He charmed even his critics with his "great good humour and hilarity." Marshall never allowed his mental powers to corrode. He had "one . . . almost supernatural faculty," wrote a lawyer, "that of developing a subject by a single glance of his mind. . . ."*

PERLEY'S REMINISCENCES, LIBRARY OF CONGRESS

remote corner in which Justice is administered to the American Republic. . . ."

Strangers traversing the Republic had other troubles. "I passed away my 20-dollar note of the rotten bank of Harmony, Pennsylvania, for five dollars only," a disgusted traveler complained at Vincennes, Indiana. State-chartered banks, private banks, towns, sawmills, counterfeiters—all issued notes freely. "Engravings," a Scotsman called them; no law required anyone to accept them at face value as legal tender. Everyone suffered from this chaos.

Congress had chartered the second Bank of the United States in 1816 to establish a sound national currency, to issue notes it would redeem in gold or silver. By law, the government owned a fifth of the Bank's stock and named a fifth of its directors; private investors had the rest. Unscrupulous characters got control of the Bank and mismanaged its affairs.

In the South and West, where "engravings" flourished, the Bank's branches made bad loans until the home office at Philadelphia issued new orders in August, 1818: Call in those loans, don't accept any payments but gold and silver or our own notes. Panic spread. Local banks demanded payment on their own loans, and refused to extend credit; people scrambled for money they couldn't find; land went for a song at sheriffs' auctions; shops closed; men who lost their last five dollars said bitterly, "the Bank's saved and the people are ruined."

State legislators decided to drive the Bank's branches out of their domain. Maryland passed a tax law giving the Baltimore

JUDGE ON TRIAL: *Samuel Chase (seated in foreground) hears Representative John Randolph of Virginia accuse him of "high Crimes and Misdemeanors." The House impeached Chase, an outspoken Federalist, in 1805, after he used the bench of a circuit court to denounce Jeffersonian ideals of "equal rights."*

When the Senate acquitted Chase, Republicans gave up the idea of removing Federalist judges by such proceedings. Congress has never used its constitutional powers of impeachment against any other Justice of the Supreme Court.

JOSEPH E. BARRETT, NATIONAL GEOGRAPHIC STAFF © N.G.S.

branch its choice: pay up handsomely or give up and leave. The branch ignored it. Maryland sued the cashier, James McCulloch, and won in its own courts. McCulloch took his case—that is, the Bank's—to the Supreme Court, where argument began on February 22, 1819.

Splendid in his blue coat with big brass buttons, Daniel Webster spoke for the Bank—Congress has power to charter it; Maryland has no power to tax it, for the power to tax involves a power to destroy; and never, under the Constitution, may the states tax the Union into destruction.

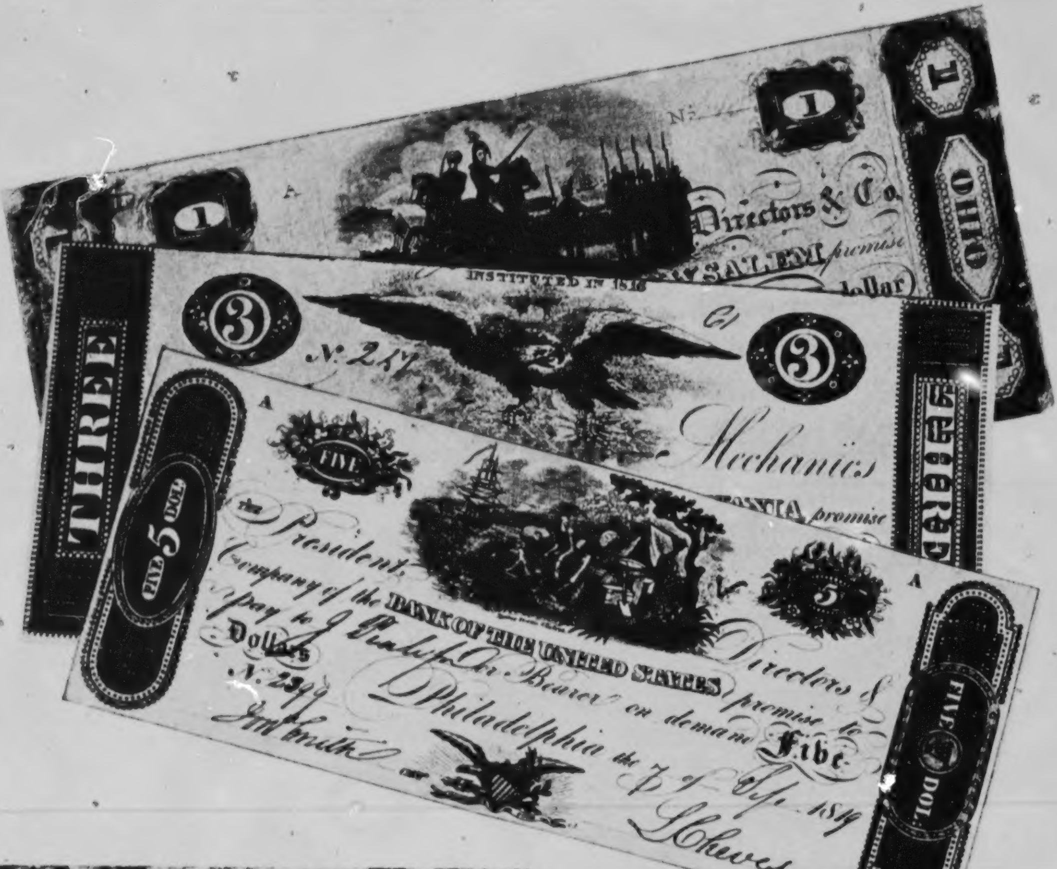
Luther Martin, Maryland's Attorney General, argued for his state. Where does the Constitution say Congress has power to create a national bank? he asked. Nowhere! he thundered. It lists specific powers, and making banks is not one of them. Mr. Webster says it *implies* such a power. Nonsense!

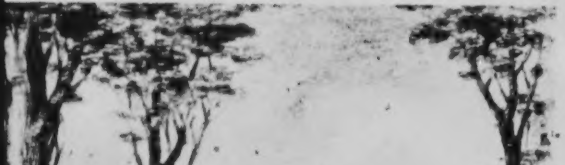
For the Court, Marshall defined the controversy: "a sovereign state denies the obligation, of a law . . . of the Union." An "awful" question, but "it must be decided peacefully." Because the Union is "emphatically, and truly, a government of the people," it must prevail over the states. To specific powers of Congress, the Constitution adds power to make all laws "necessary and proper" for carrying them into effect.

Marshall invoked "letter and spirit" to give that clause its meaning: "Let the end be legitimate, let it be within the scope of the constitution," and Congress may use "all means which are appropriate . . . which are not prohibited." So the Bank was constitutional; no state might tax it. Maryland's law was "unconstitutional and void."

The Court's ruling settled the conflict of law but not the political fight over the Bank's power and states' rights. Virginia's legislature made a "most solemn protest" against the decision in *McCulloch* v. *Maryland;* Ohio officials took money by force from one Bank branch. Not until President Andrew Jackson vetoed the Bank's recharter did that controversy die down.

States' rights against the powers of the Union—the issue became more explosive





LISA BIGANZOLI (ABOVE) © N.G.S. AND SMITHSONIAN INSTITUTION

WILDCAT "ENGRAVINGS" *of dubious value issued by local banks underlie a five-dollar note from the second Bank of the United States, charted by Congress in 1816 to provide a sound currency. Caught without proper reserves during the financial panic of 1818, local banks had to foreclose on mortgages and auction land (left). People blamed banks in general, and the Bank in particular, for the severe depression that followed.*

Maryland and other states passed laws levying a heavy tax against the Bank's branches, hoping to close them. When cashier James McCulloch of the Baltimore branch ignored the law, Maryland sued him.

*The Constitution does not say Congress can charter a bank, argued the state (***McCulloch v. Maryland***). But the Supreme Court said the Bank was lawful, ruling for the first time that "implied powers" in the Constitution enable Congress to enact laws "on which the welfare of a nation essentially depends."*

than ever when the country faced its first great quarrel over slavery, in 1819. Southerners in Congress threatened secession and civil war; a Georgian foresaw "our houses wrapt in flames." When the House was discussing a bill to make Missouri Territory a state, a New York Representative had suggested that Congress forbid slavery there. Southerners warned, "the Union will be dissolved." The reply flashed, "let it be so!"

For months the furious debate went on. Then, in February, 1820, Senator Jesse B. Thomas of Illinois offered a compromise: Maine to be a free state; Missouri a slave state, and the rest of the Louisiana Purchase north of 36° 30′ free soil forever. Henry Clay supported the plan; early in March, President James Monroe signed the laws to carry it out. Apparently the crisis was over.

In Norfolk, Virginia, P. J. and M. J. Cohen broke the law by selling six tickets in a lottery established by Congress to pay for improvements in the District of Columbia. Virginia law forbade all lotteries except its

ROBERT C. MAGIS, NATIONAL GEOGRAPHIC STAFF © N.G.S.

FRENZIED NORTHERNERS *carry the effigy of Pennsylvania Congressman David Fullerton toward a barrel of burning tar at the county courthouse in Carlisle. The angry crowd marched through the streets in protest of Fullerton's vote for the 1820 Missouri Compromise that enabled Missouri to join the Union as a slave state. Later Fullerton resigned as a result of the feeling. Such agitation over slavery in the territories made the Dred Scott case a national issue 37 years later.*

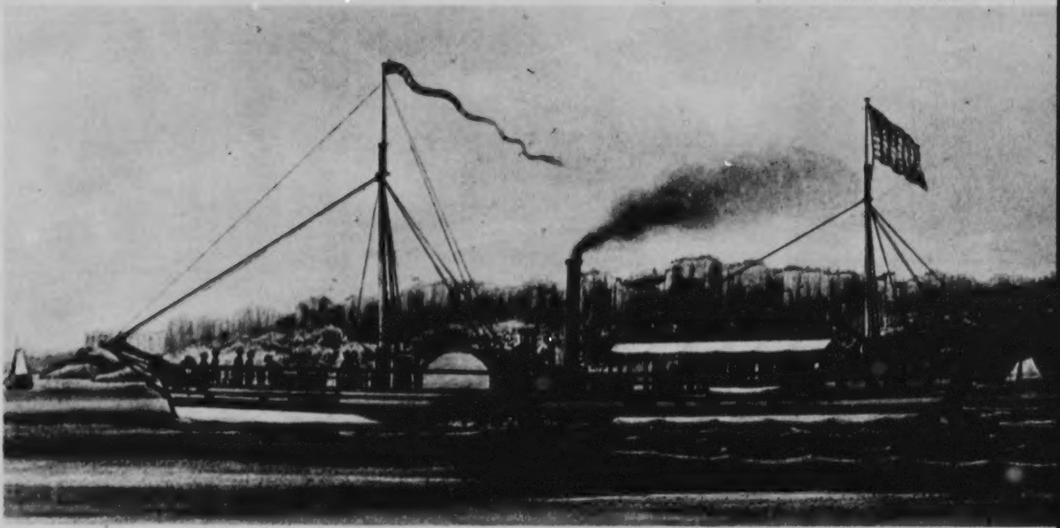
own. A Norfolk court convicted the Cohens; they turned to the Supreme Court, pointing out that their lottery tickets were authorized by federal law.

Virginia rose in wrath; her General Assembly declared that the Court had no jurisdiction. Her lawyers fought the Cohens' request for a hearing. They warned the Supreme Court against "exciting the hostility of the state governments," which would decide how long the Union should endure. For trouble had flared again as Congress debated

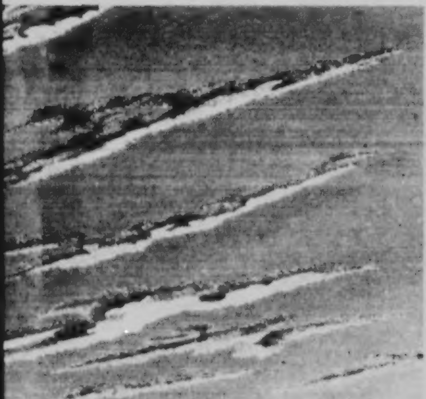
BITTER PARTNERS: *Aaron Ogden (left) sued Thomas Gibbons over steamboat shipping rights in New York's harbor (below), claiming exclusive rights under state law. But Gibbons insisted that an Act of Congress permitted his steamboats to enter; and the Supreme Court ruled in his favor. Former Justice Arthur Goldberg has said: "In* **Gibbons v. Ogden,** *Marshall gave the classic interpretation of the Constitution's commerce clause, which made the United States a common market."*

NEW-YORK HISTORICAL SOCIETY (UPPER LEFT), COURTESY WILLIAM L. HOPKINS, JR. (UPPER RIGHT), AND LIBRARY OF CONGRESS

NEW-YORK HISTORICAL SOCIETY



"DEVIL IN A SAWMILL" *cried one startled rustic as Fulton's steamboat plied the Hudson River.*



Missouri's proposed constitution and states' rights in general. Now what had been a trivial criminal case took on political importance at a time of major crisis.

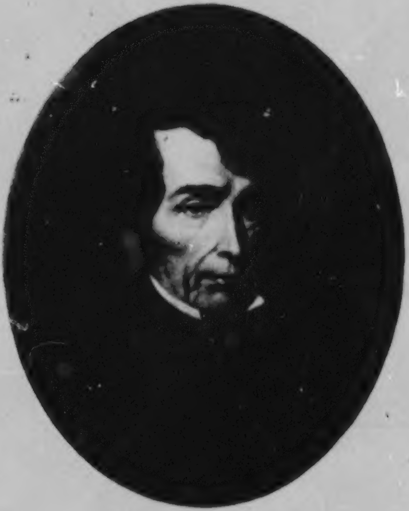
Appearing for the Cohens were two of the country's most famous attorneys, David B. Ogden and William Pinkney. Ogden flatly denied the sovereignty of any state. Pinkney asserted that if any case involves federal law, federal courts must give the final decision, or the Union is "a delusion and a mockery!"

Congress adopted a new compromise on statehood for Missouri; and Marshall gave an uncompromising ruling on *Cohens* v. *Virginia*. The Court would hear the case; it existed to resolve such "clashings" of state and Union power, to keep the national government from becoming "a mere shadow." Insisting on the power of his Court, the Chief Justice boldly met the threat of secession and the claims of state sovereignty; he upheld the Union as the supreme government of the whole American people.

Then the Court heard argument on the merits of the case, and affirmed the sentence of the Norfolk court. The Cohens lost $100—their fine—and costs.

SOUTHERNERS FUMED at Marshall's stand in the Cohens' case. But in 1824, for once, a Marshall ruling met popular acclaim. Huzzas from the wharves greeted the steamboat *United States* as she chuffed triumphantly into New York harbor, her crew firing a salute, her passengers "exulting in the decision of the United States Supreme Court." That case was *Gibbons* v. *Ogden*.

Robert Fulton successfully demonstrated a steam-powered vessel on the Seine at Paris in 1803. With his

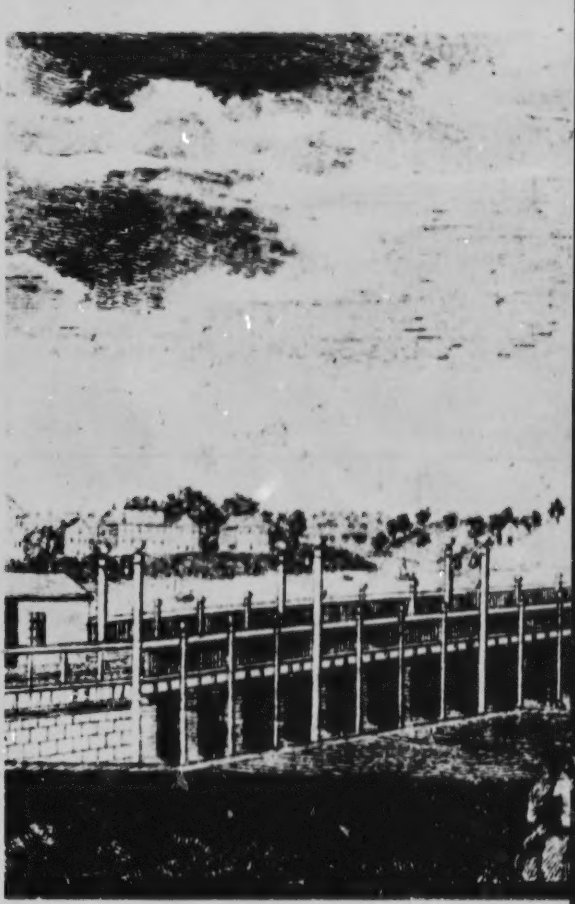


"**INTEREST OF THE PUBLIC** *must . . . always be regarded as the main object" of charters, said Roger B. Taney. As Chief Justice he wrote this view into law in settling a controversy over two bridges at Boston. Proprietors of the Charles River toll bridge (right), under state charter, claimed Massachusetts could not let another company open a competing bridge nearby.*

In this clash of private rights and state powers, a new voice at the Supreme Court spoke for the community. In 1835, President Andrew Jackson had named Taney, his former Attorney General, to succeed Marshall as Chief Justice.

Taney lacked ornate eloquence, but his hollow, low voice and earnest delivery added clarity and persuasiveness to his statements. His defiant stand on citizens' rights during the Civil War brought him public scorn.

*In the bridge case, his first important opinion, Taney ruled that the state had power to approve construction of the much-needed Warren Bridge to serve the people. This decision (***Charles River Bridge v. Warren Bridge***) spanned a gap between established property rights and changing needs.*

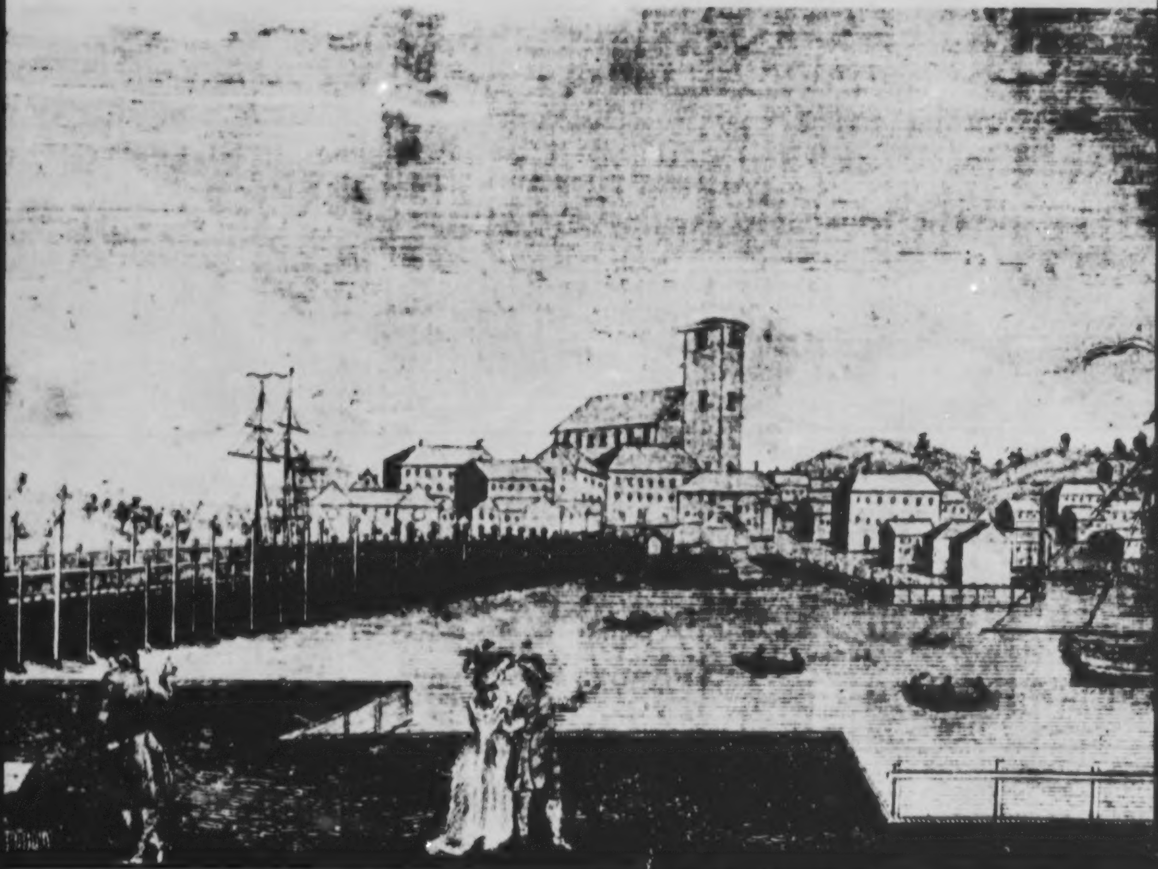


CAUSEWAY OF CONTROVERSY: *Charles River Bridge in 1789 ran from the foot of Prince Street in Boston (foreground) to old*

partner, Robert R. Livingston, he held an exclusive right from New York's legislature to run steamboats on state waters, including New York harbor and the Hudson River. In 1807 their steamer splashed up the Hudson to Albany; soon money flowed into their pockets. Anyone else who wanted to run steamboats on those waters had to pay them for the privilege; some Albany men attacked the monopoly in state courts, and lost.

In 1811 the territorial legislature in New Orleans gave the partners a monopoly on the Mississippi. Now they controlled the two greatest ports in the country.

New Jersey passed a law allowing its citizens to seize steamboats owned by New Yorkers; other states enacted monopolies and countermeasures until the innocent



NEW YORK PUBLIC LIBRARY (LEFT) AND GOODSPEED'S BOOK SHOP

Charlestown, Massachusetts. The bridge, then considered a remarkable engineering feat, stretched 1,503 feet on 75 oak piers. *Despite predictions that strong tidal currents or floating ice would collapse the span, it stood more than a century.*

side-wheeler was turning into a battleship.

Meanwhile three men of property went into business, then into rages, then into court. Robert Livingston's brother John bought rights in New York bay; then he sublet his waters to former Governor Aaron Ogden of New Jersey, a quarrelsome lawyer. Ogden took a partner, Thomas Gibbons, equally stubborn and hot-tempered. Soon these three were suing one another in New York courts.

Under an old Act of Congress, Gibbons had licensed two steamboats for the national coasting trade, and now he invoked this federal law to get a suit against Ogden before the Supreme Court.

Ladies crowded lawyers to hear the case. Daniel Webster spoke for Gibbons on February 4, 1824; Ogden's attorneys quoted established law and precedents for two days. But Marshall avoided shoals of precedents and veering winds of state laws to set his course by the Constitution—the clause giving Congress power to regulate commerce among the states. For the first time the Court defined these words; in them Marshall found vast new currents of national strength.

More than buying and selling, he proclaimed, commerce is intercourse among nations and states; it includes navigation. For all this rich activity Congress may make rules; if its rules collide with state restrictions the latter must sink. New York's law went down before an Act of Congress.

State monopolies could not scuttle ships "propelled by the agency of fire." Steam-

boats would be as free as vessels "wafted on their voyage by the winds."

With monopolies swept away, steamboat trade spread fast and freely. Soon, by that precedent, steam cars on rails spread across state lines, across the continent.

Marshall watched, as changes came and went. "We must never forget," he had said, "that it is a *constitution* we are expounding . . . . a constitution, intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs." His actions made his words unforgettable.

When Marshall gave the Presidential oath to his cousin Thomas Jefferson in 1801, the Supreme Court was a fortress under attack. It had become a shrine when he gave the oath to Andrew Jackson in 1829.

New crises arose during Jackson's Administration. Marshall carried on his work, concerned for the country's future but not for his failing health. Jay had resigned after five years, Ellsworth after four; Marshall served from 1801 until his death in 1835. When he took the judicial oath the public hardly noticed; when he died the Nation mourned him. "There was something irresistibly winning about him," said the *Richmond Enquirer*. And *Niles' Register*, which had long denounced his decisions, said, "Next to WASHINGTON, only, did he possess the reverence and homage of the heart of the American people."

BLOODSHED IN THE SENATE: *South Carolina Representative Preston Brooks flails Senator Charles Sumner of Massachusetts after Sumner has unleashed an antislavery speech insulting Brooks's cousin, Senator Andrew Pickens Butler of South Carolina. The attack echoed a crisis in 1856: Would Kansas vote to be a free or slave state? Although the Supreme Court tried to resolve the slavery issue, passions exploded into civil war.*

"WHIRLWIND OF MURDER," *wrote poet John Greenleaf Whittier of the Marais des Cygnes massacre. Near the Kansas border, proslavery riders shoot settlers who would vote for a free state in a fair election.*

About Marshall's successor, a New York journal sputtered: "The pure ermine of the Supreme Court is sullied by the appointment of that political hack, Roger B. Taney." Daniel Webster confided, "Judge Story. . . . thinks the Supreme Court is *gone*, and I think so too." The Senate debated the nomination for almost three months.

Born in Maryland in 1777, Taney attended Dickinson College, read law, and plunged into Federalist politics. While other lawyers took pride in oratory, he spoke simply in low tones that convinced juries.

Invoking freedom of speech, Taney won acquittal in 1819 for a Methodist preacher whose sermon on national sins provoked the charge of trying to stir up slave rebellion.

Suspicious of the Bank of the United

NEW YORK PUBLIC LIBRARY (LEFT) AND "BEYOND THE MISSISSIPPI," LIBRARY OF CONGRESS

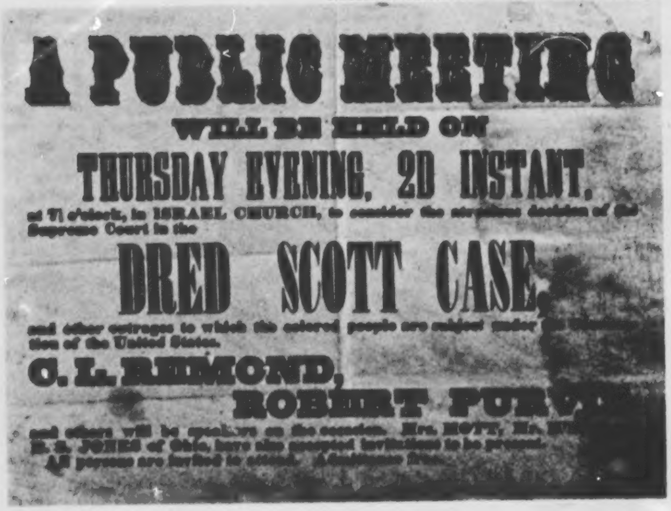
States, Taney campaigned for Andrew Jackson. In 1831 President Jackson wrote, "I have appointed mr Tauney atto. Genl." (His spelling gives the right pronunciation.) Taney supplied legal weapons in Jackson's war with the Bank, when passion ran so high that Vice President Martin Van Buren wore pistols to preside in the Senate.

Presiding over the Supreme Court for the first time, in January, 1837, Taney wore plain democratic trousers, not knee breeches, under his robe. The Court was entering a new era. A law passed in March added two new judicial circuits in the southwest and two Associate Justices. The Court became unmistakably Jacksonian; conservatives dreaded what it might do to property.

But property survived. Its rights were "sacredly guarded," Taney wrote in the Charles River Bridge case, but "we must not forget that the community also have rights, and that the happiness and well being of every citizen depends on their faithful preservation." He interpreted corporation charters more strictly, state powers more generously, than Marshall had.

Meanwhile, a new agitation over human rights was growing. If it went on, wrote a Georgia planter, "we will be compelled to arm our Militia and shoot down our property

LINCOLN UNIVERSITY LIBRARY, OXFORD, PENNSYLVANIA



A PUBLIC MEETING

WILL BE HELD ON

THURSDAY EVENING, 2D INSTANT.

at 7½ o'clock, in ISRAEL CHURCH, to consider the atrocious decision of the Supreme Court in the

DRED SCOTT CASE,

and other outrages to which the colored people are subject under [illegible] tion of the United States.

C. L. REMOND,

ROBERT PURV

and others will be speakers on the occasion. Mrs. MOTT, Mr. M[illegible] B. S. JONES of Ohio, have also accepted invitations to be present. All persons are invited to attend. Admittance free.

"ATROCIOUS DECISION" *cries a poster in Philadelphia, where abolitionists shouted their rage and disgust over the outcome of the Supreme Court's most famous case* (Dred Scott v. Sandford). *A slave in Missouri, Dred Scott sued for his liberty, insisting that a sojourn on free soil in Illinois and Wisconsin Territory entitled him to be free. In 1857, the Supreme Court rejected his claim. Chief Justice Taney said no Negro could be a citizen with constitutional rights to bring suit. His opinion wounded the Court's prestige in the North, for it insisted that Congress had no power to limit the expansion of slavery. Northern papers bristled with moral indignation; said one editorial, "If the people obey this decision, they disobey God."*

MISSOURI HISTORICAL SOCIETY

"BID STRONG *for this woman and child!" shouts a slave auctioneer on the steps of St. Louis's old courthouse. Here Dred Scott's case was first heard by state judges. It finally reached the Supreme Court. Federal marshals (right), acting under the 1850 Fugitive Slave Law, seize a Negro suspected of being a runaway slave.*

PERLEY'S REMINISCENCES, LIBRARY OF CONGRESS

LIBRARY OF CONGRESS

WISPY AND BENT, *Chief Justice Taney administers the Presidential oath of office to James Buchanan in 1857. In his Inaugural Address, Buchanan said the question of territorial slavery would "be speedily and finally settled" by the Supreme Court. Instead, Taney's ruling on Scott only sped the Civil War.*

"HEAP O'TROUBLE," *said Scott of his decade-long lawsuit. After the Supreme Court denied Scott freedom, his owner released him from bondage. Newspaper pictures him with wife and daughters.*

in the field.... tell the agitators we had rather fight them than our own negroes, and that we will do it too...."

In 1846 the United States and Mexico went to war. Unnoticed, a Negro named Dred Scott filed suit in a Missouri court. Twelve years earlier, John Emerson, an Army surgeon, had taken his slave Scott from Missouri to Illinois, where the Northwest Ordinance and state law forbade slavery. Then he had taken Scott to Fort Snelling, a frontier Army post in territory where the Missouri Compromise banned slavery forever. In 1838 he had taken Scott back to Missouri. Emerson died, and Scott sued the widow, claiming that this sojourn on free soil had made him a free man. In 1850 the Missouri court declared him free.

Mrs. Emerson appealed. The state's highest court ruled in 1852 that, free or not on free soil, Scott became a slave under state law when he went back to St. Louis.

Scott's was becoming a test case. To get it into a federal court—because federal courts have jurisdiction in suits between citizens of different states—title to Scott passed to Mrs. Emerson's brother, John F. A. Sanford of New York (misspelled "Sandford" in the records).

Claiming Missouri citizenship, Scott sued Sanford for his freedom in the federal court in St. Louis. Sanford's lawyers argued that Scott could not be a citizen because he was a slave and a Negro. The court ruled against Scott, May 15, 1854.

Congress passed the Kansas-Nebraska Act two weeks later, opening more of the West to slavery by repealing the Missouri Compromise line. Furious northerners burned its author, Stephen A. Douglas, in effigy. On July 4, abolitionist William Lloyd Garrison publicly burned a copy of the Constitution, crying, "So perish all compromises with tyranny."

Fighting broke out in Kansas and made the expansion of slavery the issue in the 1856 Presidential campaign, won by James Buchanan. The Supreme Court heard argument in *Dred Scott* v. *Sandford* in February, 1856, reached the end of its term, then heard argument again in December.

By then the whole country had heard of Dred Scott. "The Court, in trying this case, is itself on trial," said the *New York Courier.*

In February, 1857, a majority of the Justices agreed to follow precedent and say that the ruling of the highest state court was final—that Scott was a slave under state

FRANK LESLIE'S
ILLUSTRATED
NEWSPAPER

Entered according to Act of Congress, in the year 1857, by Frank Leslie, in the Clerk's Office of the District Court for the Southern District of New York. (Copyrighted June 22, 1857.)

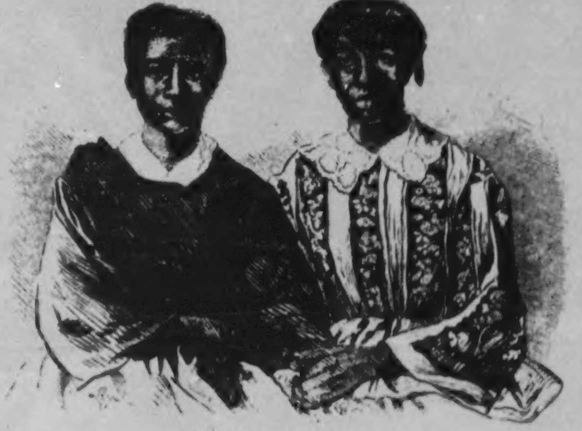
No. 82.—VOL. IV.] NEW YORK, SATURDAY, JUNE 27, 1857. [Price 6 Cents.

TO TOURISTS AND TRAVELLERS.

We shall be happy to receive personal narratives, of land or sea, including adventures and incidents, from every person who pleases to correspond with our paper.

We take this opportunity of returning compliments to our numerous artistic correspondents throughout the country, for the many sketches we are constantly receiving from them of the news of the day. We trust they will spare no pains to furnish us with drawings of events as they may occur. We would also remind them that it is necessary to send all sketches, if possible, by the earliest conveyance.

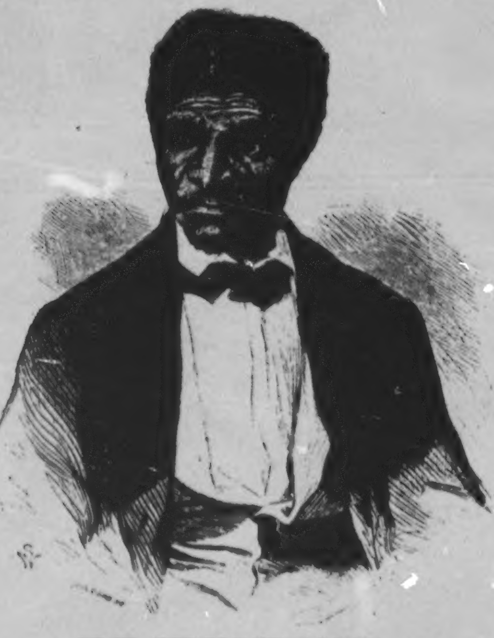
VISIT TO DRED SCOTT—HIS FAMILY—INCIDENTS OF HIS LIFE—DECISION OF THE SUPREME COURT.



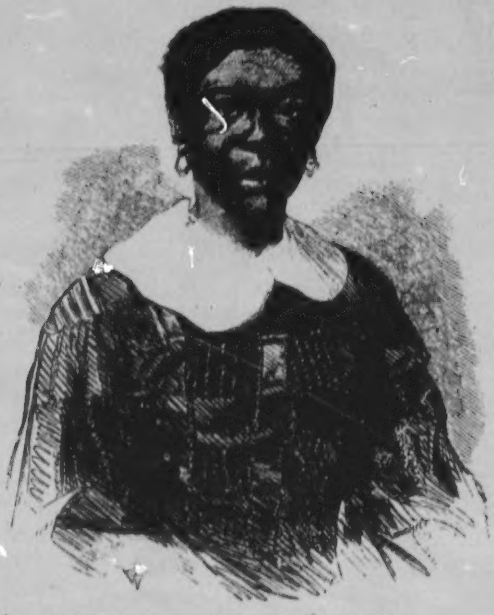
ELIZA AND LIZZIE, CHILDREN OF DRED SCOTT.

While standing in the Fair grounds at St. Louis, and engaged in conversation with a prominent citizen of that enterprising city, he suddenly asked us if we would not like to be introduced to Dred Scott. Upon expressing a desire to be thus honored, the gentleman called to an old negro who was standing near by, and our wish was gratified. Dred made a rude obeisance to our recognition, and seemed to enjoy the notice we expended upon him. We found him on examination to be a pure-blooded African, perhaps fifty years of age, with a shrewd, intelligent, good-natured face, of rather light frame, being not more than five feet six inches high. After some general remarks we expressed a wish to get his portrait (we had made efforts before, through correspondents, and failed), and asked him if he would not go to Fitzgibbon's gallery and have it taken. The gentleman present explained to Dred that it was proper he should have his likeness in the "great illustrated paper of the country," overruled his many objections, which seemed to grow out of a superstitious feeling, and he promised to be at the gallery the next day. This appointment Dred did not keep. Determined not to be foiled, we sought an interview with Mr. Crane, Dred's lawyer, who promptly gave us a letter of introduction, explaining to Dred that it was to his advantage to have his picture taken to be engraved for our paper, and also directions where we could find his domicile. We found the place with difficulty, the streets in Dred's neighborhood being more clearly defined in the plan of the city than on the mother earth; we finally reached a wooden house, however, protected by a balcony that answered the description. Approaching the door, we saw a smart, tidy-looking negress, perhaps thirty years of age, who, with two female assistants, was busy ironing. To our question, "Is this where Dred Scott lives?" we received, rather hesitatingly, the answer, "Yes." Upon our asking if he was home, she said,

"What white man arter dad nigger for?—why don't white man 'tend to his own business, and let dat nigger 'lone? Some of dese days dey'll steal dat nigger—dat are a fact."



DRED SCOTT. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.



HIS WIFE, HARRIET. PHOTOGRAPHED BY FITZGIBBON, OF ST. LOUIS.

FRANK LESLIE'S ILLUSTRATED NEWSPAPER (BELOW) AND LIBRARY OF CONGRESS

AMID FLYING STONES *and bullets the first Civil War victims fall during a riot in Baltimore in 1861. Southern sympathizers attacked the 6th Massachusetts Regiment, killing four soldiers. Loyal Unionists (left) guarded the office of the city's provost marshal against the mob. The military arrested citizens suspected of disloyalty, rebellion, or treason—including John Merryman, a prominent figure in Baltimore. In Merryman's behalf, Chief Justice Taney sent Lincoln a sharp official protest denying that the President had constitutional power to suspend the protection of law, especially the writ of habeas corpus, in any emergency whatsoever.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER EMORY KRISTOF © N.G.S.

REGIMENTAL COLOR *of the 6th Massachusetts heralded the unit's arrival in Washington. The Baltimore rioters struck the militia April 19, 86 years to the day after Massachusetts Minutemen became the first Revolutionary War victims.*

law. Such a decision would leave to the judgment of the country two dangerously controversial issues: Whether or not a free Negro might be a citizen of the United States; and whether or not the 1820 Missouri Compromise was constitutional.

But Justices John McLean of Ohio and Benjamin R. Curtis of Massachusetts intended to dissent and say that Scott was a free man and a citizen, that Congress had constitutional power over slavery in the western territories.

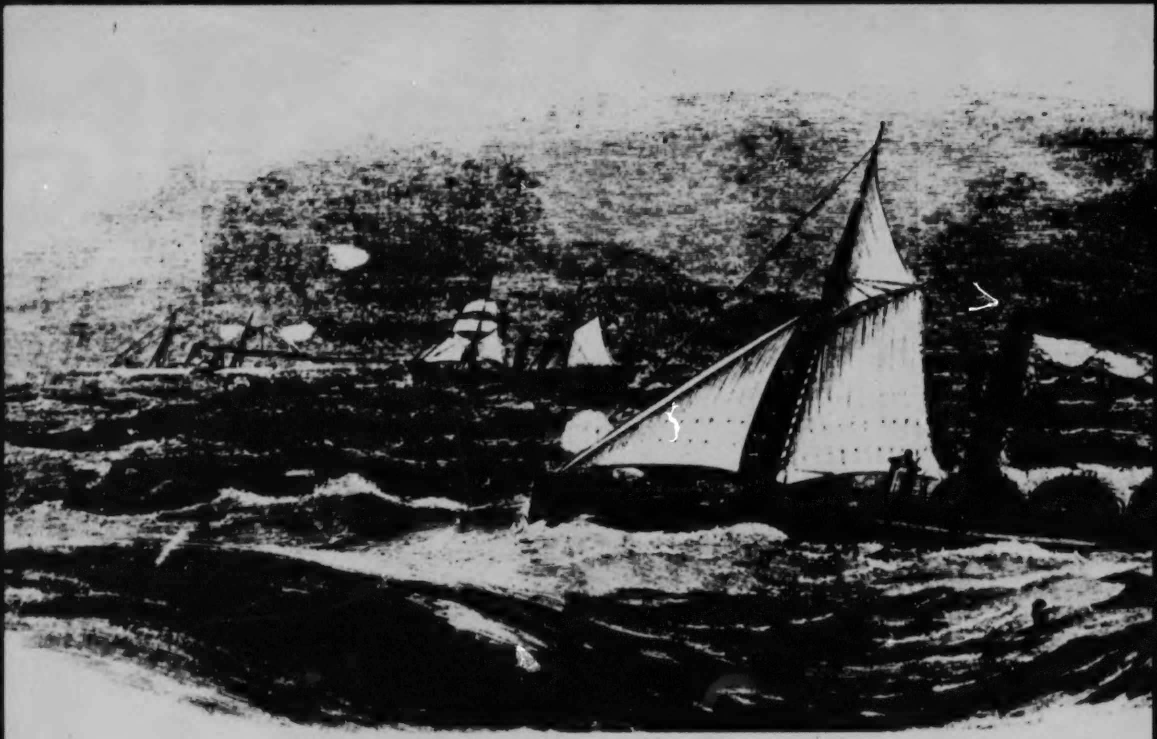
In his Inaugural Address on March 4, James Buchanan promised that "in common with all good citizens" he would "cheerfully submit" to the Supreme Court's decision in Dred Scott's case.

Two days later the Justices began to deliver eight separate opinions. The majority ruled that Scott was still a slave. Three, including Taney, said no Negro, even if free, could hold citizenship in the United States.

And for the first time since 1803, the Court held an Act of Congress null and void. Under the Constitution, it announced, Congress had no power to limit the expansion of slavery by law, as the Missouri Compromise of 1820 had done.

For the first time in years, the Court came under furious attack. Almost unnoticed, Scott's owner set him free. Before the case was decided, Sanford had gone insane; before the slavery question was settled, war tried the sanity of the country.

"HAVE WE EVER had any peace on this slavery question?" asked Abraham Lincoln. The Illinois crowd yelled "No!" It



was 1858; Lincoln was challenging Stephen A. Douglas for a Senate seat—and challenging the Supreme Court's ruling on slavery.

Douglas defended the decision in Dred Scott's case as the pronouncement of "the highest tribunal on earth," in spite of his own objections to it. "From that decision there is no appeal this side of Heaven," he cried.

One decision settles one case, retorted Lincoln; it does not even settle the law, still less the future of the country.

Douglas won the Senate seat; in 1860 he lost the race for the Presidency, and the Republicans came to power with Lincoln.

Chief Justice Taney administered the oath of office to Lincoln, March 4, 1861, and heard him disclaim "any assault upon the Court." But Lincoln warned solemnly: "if the policy of the Government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation . . . the people will have ceased to be their own rulers. . . ."

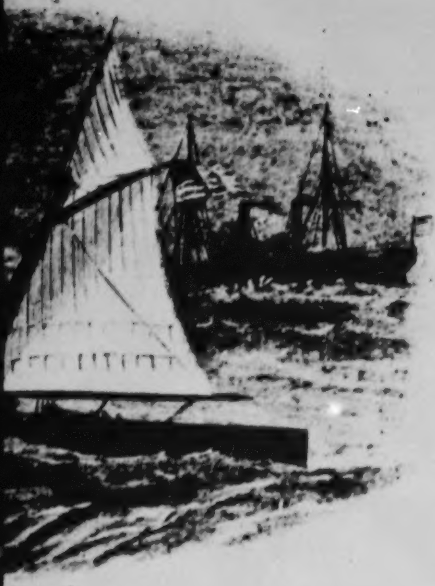
That day the first banner of the Confederate States of America flew over the statehouse at Montgomery, Alabama.

Secession divided the Supreme Court. Justice John A. Campbell, who thought disunion wrong, resigned and went sadly home to Alabama. Justice James Moore Wayne of Georgia, last survivor of Marshall's Court, remained; until his death in 1867, he voted to sustain all the war measures the Court passed judgment on.

Justice John Catron, over 70, hurried off to uphold the laws of the United States on his secessionist circuit. Tennessee had made a military pact with the Confederacy when he got to Nashville. Dodging rebel forces, he reached St. Louis and held court there. When he returned to Nashville a citizens' committee drove him out of his home.

In Maryland, part of Taney's circuit, many favored the Union, some the South. Washington's only railroad to the north ran through Baltimore, where an angry crowd mobbed troops hurrying to defend the capital. Lincoln told the Army to suspend the writ of habeas corpus and establish martial rule, if necessary, to keep Maryland safe.

The military jailed citizens on mere suspicion; troops arrested John Merryman for taking part in the Baltimore riot and blowing up railroad bridges. Locked up in Fort McHenry, he applied for a writ of habeas corpus—a court order for proof that a prisoner is lawfully confined.



FAMOUS AUTHOR, *lawyer Richard Henry Dana, Jr., who wrote* Two Years Before the Mast, *defended Lincoln's blockade of southern coasts in the 1863 Prize Cases.*

COURTESY RICHARD H. DANA

GUNS BLAZING, *Union ships (above) chase a southern side-wheel steamer. A gun crew (below) prepares to fire a warning shot across the bow of another blockade runner. In 1861 Lincoln had blockaded southern ports. Owners of captured merchant ships and cargo, protesting that the Union sea barrier was unlawful, brought suit to recover their property. They argued that until Congress voted a declaration of war, Lincoln had no constitutional power to order a blockade. But in the Prize Cases, the Supreme Court upheld the President's bold acts. He had to fight the war, it said, "without waiting for Congress to baptize it with a name."*

HARPER'S WEEKLY (ABOVE AND UPPER LEFT)

Only in "Rebellion or Invasion" when "the public safety may require it" may the privilege of habeas corpus be suspended, says the Constitution.

Hurrying to Baltimore, Chief Justice Taney issued a writ to Gen. George Cadwalader: Bring Merryman to court and explain his arrest. The general sent a letter—he had to consult the President. Taney ordered a marshal to seize the general; but a sentry barred the marshal from Fort McHenry. The Chief Justice challenged the President's right to take legislative and judicial power, calling on him to uphold the law and the courts.

Lincoln did not reply; Congress upheld him. But when the emergency had passed, the government quietly brought Merryman's case to a federal court; later still, it quietly let him go free.

Resignation and death left three seats vacant at the Supreme Court. Lincoln appointed Noah H. Swayne of Ohio, Samuel F. Miller of Iowa, and his old friend from Illinois, David Davis. But no one knew what the Court would do when it heard the Prize Cases in 1863.

Before calling Congress into special session, Lincoln had authorized martial rule in Maryland, called for volunteers, pledged government credit for huge sums, and proclaimed a blockade of southern ports. To meet the crisis of war, the President swept into the realm of legislative power like an invading general. Four merchant ships, seized under Lincoln's blockade orders and condemned as prize, carried his measures before the Supreme Court.

The owners brought suit for the vessels and cargo, arguing that war alone warrants

"GUILTY!" *ruled this Civil War military commission that tried Lambdin P. Milligan, an Indiana lawyer, for conspiring to overthrow the government of the Union. A civilian, he demanded jury trial in a federal court.*

— MILITARY COMMISSION THAT TRIED INDIANA CONSPIRATORS IN 1864.
Gen. S. Colgrove. Col. T. Lucas. Col. T. Bennett Col. B. Spooner Col. D. DeHart Major H. Burnett
Col. Stevens Col. Wm. McLean Col. Murray Col. R. Wilson

THE INDIANA HISTORICAL SOCIETY (ABOVE AND RIGHT) a blockade and only Congress may declare war; they denied that Lincoln's emergency powers had any reality in constitutional law.

If the Court upheld the blockade as a legal war measure, England and France might recognize the Confederacy; if it did not, the government would have to pay huge damages for captured ships, and other war measures would be in question. Either decision would endanger the Union.

Justice Robert C. Grier spoke for himself, Wayne, and Lincoln's three appointees: The President had to meet the war as "it presented itself, without waiting for Congress to baptize it with a name"; and rebellion did not make the South a sovereign nation. Four dissenters said the conflict was the President's "personal war" until Congress recognized the insurrection on July 13, 1861. But the prairie lawyer had won his case.

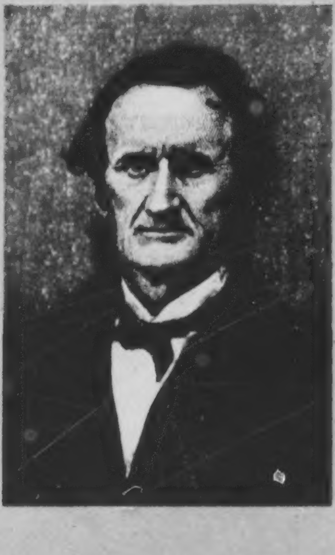
Chief Justice Taney died, aged 87, in October, 1864. Lincoln's Attorney General Edward Bates wrote that his "great error" in the Dred Scott case should not forever "tarnish his otherwise well earned fame." And not long after Taney's death, victory for the Union brought vindication of his defiant stand for the rule of law.

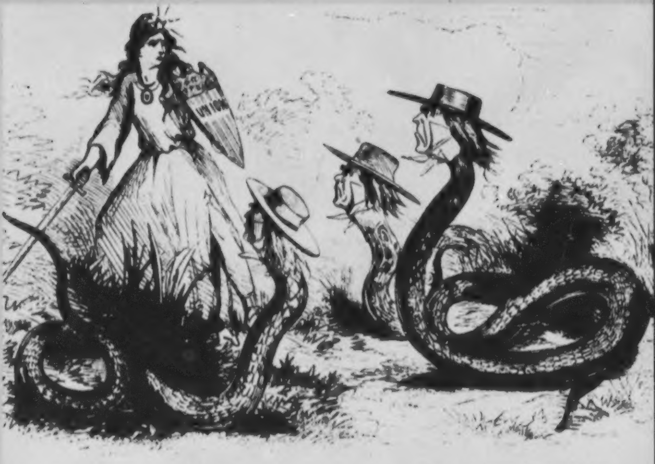
Army authorities had arrested Lambdin P. Milligan of Indiana, a civilian, tried him before a military commission, convicted him of conspiring to overthrow the government, and sentenced him to hang. With Milligan's petition for a writ of habeas corpus, the Supreme Court considered the problem of military power over civilians.

During "the late wicked Rebellion," Lincoln had authorized such military tribunals. But, said the Justices, the federal courts in Indiana were always open to try

In 1866, the Supreme Court (Ex parte Milligan) held that no military tribunal could try civilians where federal courts were "open and ready to try them" because the Constitution protects "all classes of men, at all times, and under all circumstances."

LAMBDIN P. MILLIGAN





THE COPPERHEAD PARTY.—IN FAVOR OF A VIGOROUS PROSECUTION OF PEACE!

TREACHEROUS COPPERHEADS, *members of a northern political faction that sought Civil War peace at any price, threaten the Union in this 1863 cartoon from* Harper's Weekly. *A southern sympathizer, Milligan plotted with other Copperheads to raid state and U. S. arsenals for a supply of weapons, free captured Confederate soldiers from northern prison camps, arm them, and send them back to fight for the South again.*

LAST SUPREME COURT CHAMBER *in the Capitol receives a famous advocate, retired Justice Stanley Reed, who in 1965 shows his grandchildren, Walter and Harriet Reed, where the Court met from 1860 to 1935. "I was admitted to practice before the Supreme Court on April 4, 1924," he recalls. "The first important case I argued for the government as Solicitor General was here in this room."*

As do all Solicitors General, he performed the duty of deciding which lower court decisions the government would appeal to the Court, what legal stand the government would adopt, and who would argue for the U. S. Reed joined the Court as an Associate Justice in 1938, and served until 1957. Below, in 1888, Chief Justice Morrison R. Waite presides over a Court session in this same room, the old Senate Chamber, sketched for Harper's Weekly.

cases like Milligan's. Therefore, under the Constitution, no military courts could try them; and, however shocking the charges, the defendants kept their rights under law.

At liberty again, Milligan sued the military for false imprisonment, and a jury awarded him damages—five dollars.

"WHAT a potato hole of a place, this!" A western lawyer, seeing the Court's first-floor room in the Capitol in 1859, thought the Justices should be "got up above ground" for some fresh air and daylight. In December, 1860, they finally moved to their new courtroom, the old Senate Chamber. With 12 rooms for their officials and records, they had more space than ever before.

Congress added a tenth seat to the Court in 1863, and Lincoln appointed Stephen J. Field of California. To succeed Taney in 1864, he chose Salmon P. Chase of Ohio.

Ambitious and able, Chase had won fame for defending runaway slaves, served one term in the Senate and two as Governor of Ohio when Lincoln named him Secretary of the Treasury in 1861. Inexperienced in finance, Chase grappled with war costs—more than $1,000,000 a day. He planned a radical new tax on income, a new system of national banks. But plans for legal tender notes, the famous "greenbacks," upset him. War or no war, he thought, the Constitution forbade such paper money.

Lincoln sent Chase a message "not to bother himself about the Constitution. . . . I have that sacred instrument here at the

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH J. SCHERSCHEL © N.G.S.

White House, and I am guarding it with great care." Reluctantly, Chase agreed.

Gossip described him addressing a mirror: "President Chase." His own hopeful publicity described his qualifications for Lincoln's place in 1864; the people declined his offer, and in June Lincoln accepted his resignation from the Treasury. Then Chase found himself named Chief Justice by the Chief Executive he had tried to supplant.

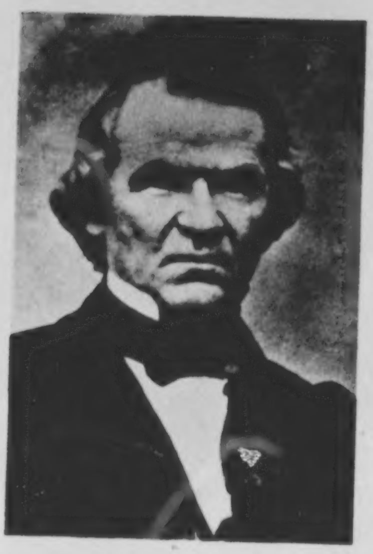
Under Radical leaders, the postwar Congress seemed determined to reconstruct the whole American government. One Representative talked of an amendment to abolish the Supreme Court; another warned President Andrew Johnson "that as Congress shall order he must obey."

Striking at Johnson, Congress lowered the number of Justices from ten to eight; and to protect the Reconstruction laws, it limited the Court's jurisdiction on appeals.

It was the Senate, not the Court, that tried the most dangerous case of those bitter years, the impeachment of the President.

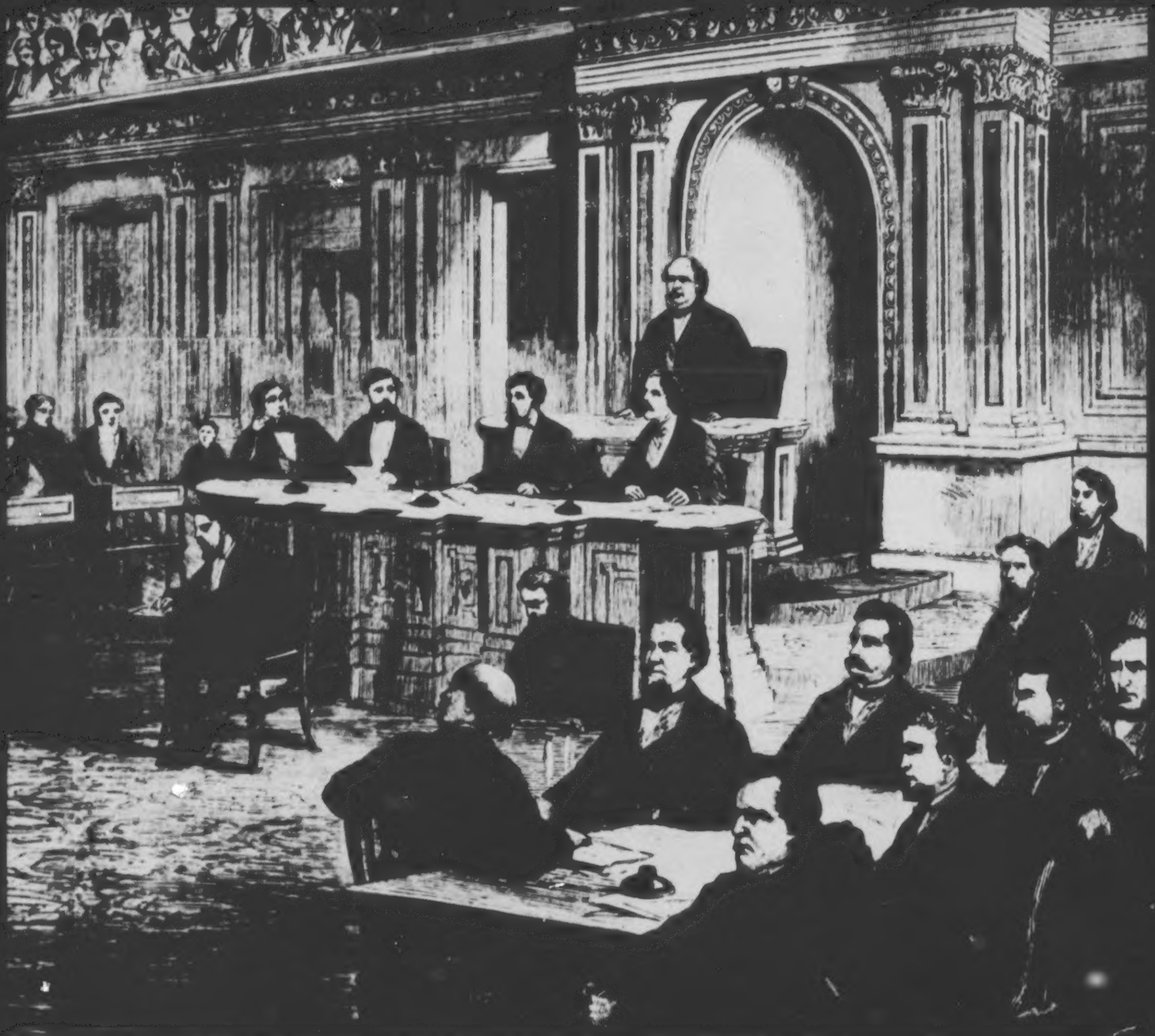
Johnson's political enemies wanted a quick conviction. The Constitution, however, required the Chief Justice to preside; and Chase insisted on presiding as a judge, while the Senate tried legal issues as a court should. The Radicals had to let him rule on points of law; Chase gave the President's lawyers a chance to be heard. Johnson escaped conviction by one vote.

Those same bitter years saw amendments altering the Constitution. In 1865 the Thirteenth abolished slavery; in 1868 the Four-



IMPEACHED PRESIDENT *Andrew Johnson faced Radical Republicans' charges of "high Crimes and Misdemeanors" for ordering Edwin M. Stanton dismissed as Secretary of War. Chief Justice Chase (below) swears in Senator Ben Wade as impeachment court member. If Johnson had been convicted, Wade, as President pro tem of the Senate, would have succeeded him as Chief Executive.*

"FEAR NOT . . . *to acquit him," urged lawyer Henry Stanbery (standing, left) for President Johnson at his impeachment trial in 1868. Here Stanbery addresses Chief Justice Chase (on dais). As prosecutors, Managers for the House of Representatives sit at right. Former Associate Justice Benjamin R. Curtis (seated, center of table at left) argued that Johnson had not violated the Tenure of Office Act, which restricted removal of cabinet officers, and that the Act itself was invalid. Johnson escaped conviction by one vote. In 1926 the Supreme Court said the Act had been unconstitutional.*



LIBRARY OF CONGRESS (UPPER LEFT) AND FRANK LESLIE'S ILLUSTRATED NEWSPAPER

teenth defined United States citizenship and defended it against infringements; in 1870 the Fifteenth barred racial limits on the right to vote.

Gen. Ulysses S. Grant became President in 1869. Congress raised the number of Justices back to nine, and at long last revised the circuit court system.

WHILE the South struggled with carpetbaggers and Ku Klux Klansmen, the rest of the country rushed into the splendors and scandals of the Gilded Age. Wartime greenbacks went cheap and debtors liked them; creditors wanted gold, and Chase and his Associates had to bother themselves about currency and the Constitution.

Hepburn v. *Griswold*, a private lawsuit, came before them in 1867, challenging the Legal Tender Act of 1862 and the Nation's money. Justice Wayne had died; when the remaining Judges discussed the case they divided four to four, as sharply as the rest of the country. Chase was one of those who opposed the law. If you had promised in 1861 to pay a debt in gold, he said, you could not force greenbacks on your creditor; Congress could not impair such contracts.

Then Grier, aged and sadly feeble, changed his vote so that Chase spoke for a majority. Somewhat awkwardly, the Chief Justice struck down in 1870 the law he had reluctantly defended at the Treasury.

Dissenting, Justice Miller insisted: Congress had all the powers it needed to fight a war, including power to change the currency.

Although the Court's decision applied to contracts made before February 25, 1862,

Don't you think that's adulterated about enough Eh!
TREASURY
RRENCY

it implied that greenbacks might not be valid for later contracts. It called in question more than $350,000,000 in greenbacks. The government fretted. A Boston newspaper protested bitterly against "the country's being mangled and slaughtered, while the Supreme Court is making experiment upon the laws of currency."

Grier had resigned; Grant named William Strong and Joseph P. Bradley to the Court. They wanted to hear argument in other legal tender cases; astonished lawyers heard the Justices argue furiously on the bench about reopening the money question. After hearing the new cases in 1871, the two new Justices joined the three dissenters of *Hepburn* to overrule that decision.

Strong announced that the Legal Tender Act was constitutional; it helped pay for the war, it saved the Nation. Bradley, concurring, went further: Under the monetary power, Congress could provide for paper money even in peacetime emergencies—a view the Court accepted 13 years later.

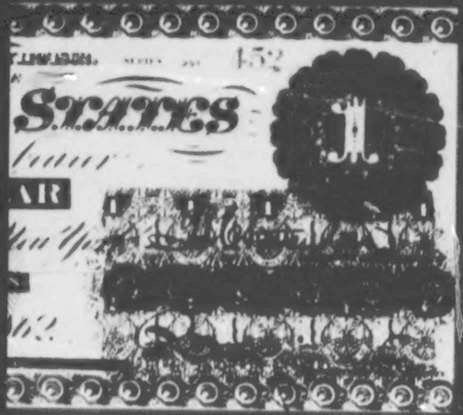
Angry editors charged that Grant had packed the Court; and even people who liked greenbacks disliked the Court's reversing itself so thoroughly and so fast.

After the spring term of 1873, Chase died. A Negro guard of honor brought his casket to the Supreme Court Chamber for a state funeral. As it rested on Lincoln's catafalque, a moment of Presidential honor came to the Chief Justice at last.

FOR CHASE'S SUCCESSOR, the Senate confirmed Grant's nomination of Morrison R. Waite in 1874. Thoroughly respectable, this 57-year-old attorney from Ohio lacked the nationwide fame of Jay or Marshall or Taney or Chase.

"I am getting the hang of the barn a little," Waite wrote modestly after a week in Washington. By 1877, when he gave the Court's decision in the Granger cases, he had gotten it thoroughly.

Corn in the woodbox fed the political prairie fire of the Granger movement. Railroads were charging so much to ship grain that farmers burned it for fuel instead of



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sending it for sale. Joining the Grange, or Patrons of Husbandry, farmers took their wrongs to their legislatures; four states limited freight rates by law.

Illinois farmers had unexpected allies, merchants from the Chicago Board of Trade, so disgusted at sharp practices in the grain storage business that they were willing to fight for state regulation. When Illinois law set standards for warehousing, the firm of Munn & Scott was in trouble.

With huge grain elevators in Chicago, Ira Y. Munn and George L. Scott had piled up a fortune, a name for crooked dealings, a lot of enemies, and bankruptcy.

Used to charging what the traffic would bear, the railroads found state regulation unbearable; they took their wrongs to court.

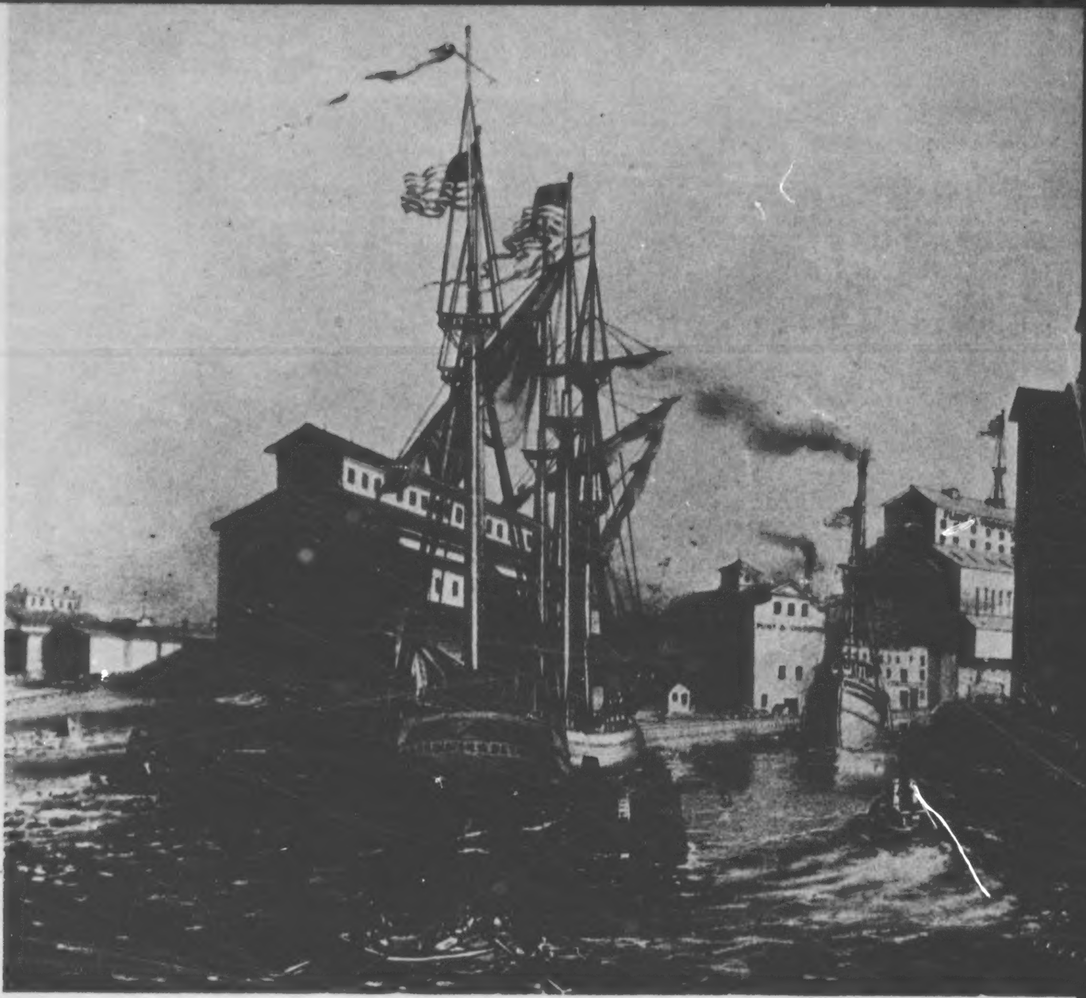
When state and federal judges upheld the "Granger laws," railroad attorneys steamed hopefully to the Supreme Court, quoting the Fourteenth Amendment on due process of law, the contract clause, and the interstate commerce clause of the Constitution. With them went lawyers for the ruined Ira Munn, still fighting a $100 fine for illegal storage rates. If these laws stood, they argued, private property would be wrecked.

Seven Justices found all these laws valid. Like Taney, they thought community rights as sacred as corporation rights. "For us the question is one of power," said Waite; when private property affects the community, the public has constitutional power to protect its interest by law, for the common good. Firms like Munn & Scott had virtual monopolies on grain—so Illinois could exercise its power to regulate them.

Waite assigned a modest role to the courts; they must assume that a legislature knows the facts, they must accept the legislature as "the exclusive judge" of when to pass regulatory laws and what to say in them.

The railroads contended that only Congress could regulate their trade; Waite ruled that until Congress did, the states were free to act within their own borders.

The *New York Herald* said: "either the people would govern the railroads, or the railroads would govern the people. The Su-



preme Court has come to the rescue. . . ."

But Justice Field, dissenting, called the decisions "subversive of the rights of private property." And his dissent would become the majority opinion in later decisions.

The railroads had rushed beyond state borders and laws, and Congress took action. It passed the Interstate Commerce Act in 1887, the Sherman Anti-Trust Act in 1890. Other laws—national and state—to regulate business and working conditions followed as time went by. But time proved that the legislatures were not to be the "exclusive judge." The Supreme Court began to set new limits on state power, although it did not flatly overrule the Granger decisions.

The Court also checked Congressional power. In 1895, a depression year, critics charged that the Court let property rights govern law. Waite had died, Melville W. Fuller had succeeded him as Chief Justice; of the Court that decided *Munn* v. *Illinois* in 1877, only Field survived.

When the Court decided its first antitrust case, the government lost its suit against a company controlling some 98 percent of all sugar refined in the United States. The Court conceded that the trust had a monopoly on making "a necessary of life" but denied that it had a direct effect on interstate commerce. This ruling left the Sherman Act weak, the trusts as strong as ever.

In another case, the Court seemed to ignore the needs of labor. Federal judges, under the Sherman Act, had issued a sweeping injunction against union leaders of the Pullman strike in 1894. Jailed for contempt of court, Eugene V. Debs applied to the Supreme Court for a writ of habeas corpus; the Justices denied it unanimously.

In a third case, the Court heard argument on a new federal income tax law, which took two percent of all incomes over $4,000. Famous lawyers prophesied communism, anarchy, and despotism if the law survived. With one Justice ill, the rest divided four to four on most of the law's provisions. After reargument, a five-to-four vote made the entire law unconstitutional.

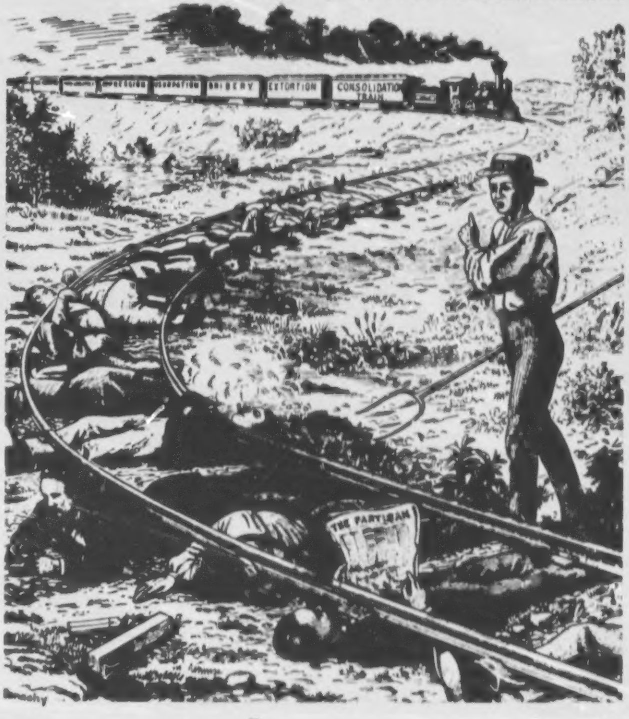
Bluntly, the dissenters called this decision "the most disastrous blow ever struck at the constitutional power of Congress," "a surrender of the taxing power to the moneyed class." John Marshall Harlan (whose grandson of the same name was to serve on the Court in the 20th century) spoke out so sharply that the *New York Sun* called his "tone and language more appropriate to a stump address."

On the stump, William Jennings Bryan said the Court stood with the rich against the poor; other political figures took up the charge. And in 1913 the Sixteenth Amendment made the income tax constitutional after all.

UNDER THE CIVIL RIGHTS ACT of 1875, one of the last Reconstruction laws, Negro citizens brought cases before the Court, protesting their exclusion from a hotel dining room in Topeka, an opera house in New York, the dress circle of a San Francisco theater, the ladies' car on a train. In 1883, eight Justices held the act unconstitutional. The Fourteenth Amendment, they said, only gave Congress power over state action; if private citizens discriminated among one another, Congress could do nothing about it. Harlan of Kentucky, the Court's only southerner, wrote a fighting 36-page dissent.

WAREHOUSES OF GRAFT: *Chicago grain elevators of Ira Munn and George Scott loom above the Chicago River. When Munn ignored an 1871 Illinois law that curbed high storage and railway shipping rates, the state sued. The Supreme Court ruling (***Munn v. Illinois***) upheld state power to regulate businesses "affected with a public interest."*

CHICAGO HISTORICAL SOCIETY (LEFT) AND CULVER PICTURES, INC.



CHAMPION OF FARMERS, *the Grange wakes the public to corrupt railroad practices. Hard-hit by low grain prices, oppressed by high railroad and warehouse rates, farmers joined the Grange to protest their wrongs and fight for laws in their interest.*

"TREADMILL *of uninterrupted work," said Chief Justice Morrison R. Waite, as the overworked Supreme Court of the 1880's found cases piling up faster than it could hear them. With a four-year backlog on their hands, the Justices welcomed an 1891 law creating the circuit courts of appeals to settle routine lawsuits.*

To enforce segregation by color, southern states began passing Jim Crow laws, to require equal but separate passenger cars on trains. Homer Adolph Plessy challenged the Louisiana law in 1892, and took his case to the Supreme Court. Its opinion cited many state precedents to show the "reasonableness" of such laws, and found nothing to stamp "the colored race with a badge of inferiority." Harlan dissented again.

"Our Constitution is color-blind," he wrote. "In respect of civil rights, all citizens are equal before the law." Still, the separate-but-equal doctrine of *Plessy* v. *Ferguson* controlled the law for years.

THE SPANISH-AMERICAN WAR gave the United States several heroes, including Col. Theodore Roosevelt; many islands, including Puerto Rico and the Philippines; and one baffling question: Does the Constitution follow the flag? Across the American West, it always had; pioneers took their citizenship with them, and new states joined the Union as equals.

These new islands—separate by ocean, alien by culture—seemed unfit for self-government or statehood. But the Constitution said nothing about colonies of subject peoples, unequal before the law.

In the famous "Insular Cases" the Supreme Court worked out a constitutional status for the new possessions; in effect and by necessity, the Court made law as it went along. Spectacular as the subject was, the Justices were doing the duty of every judge, applying the generalities of law to the demands of the specific case.

Cast-iron pipe and constitutional law bent in the hands of Circuit Judge William Howard Taft in 1898, as he carefully distinguished the case of the Addyston Company and other pipe manufacturers from the sugar-trust case. In the present case, he explained, the facts were different.

These companies conspired to fix prices, said Taft, before they agreed with their customers in 36 states to deliver shipments of pipe; therefore they were within interstate commerce and the power of Congress. Price fixing restrained trade as surely as pipe contained oil, and Congress had passed the Anti-Trust Act to release trade. Free enterprise, Taft insisted, meant free competition.

When the Supreme Court affirmed Taft's ruling, other judges had a new precedent to follow and the Sherman Act a new vitality.

Energy personified, Theodore Roosevelt became President after William McKinley's assassination, and faced what he called the "absolutely vital question"—whether the United States Government had the power to control the giant corporations of the day.

Money personified, the magnificent J. P.

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Morgan dominated finance, the Northern Pacific and other railroads, and the billion-dollar U. S. Steel Corporation; his ally James J. Hill had the Great Northern line. E. H. Harriman, with his Southern Pacific and Union Pacific routes and his friends in Standard Oil, had challenged Morgan and Hill for control of a railroad into Chicago.

After a fight that wrecked the stock market, the three agreed to combine forces. They organized a holding company, a New Jersey corporation called Northern Securities, and leaned back to enjoy their monopoly on transportation in the Northwest.

Roosevelt ordered the Attorney General to enforce the Sherman Act against them. In the Supreme Court their lawyers argued that only New Jersey could regulate a New Jersey corporation, that stock transactions were not within interstate commerce, that having power did not amount to abusing it.

Justice Harlan read the Court's opinion in March, 1904, to a crowded courtroom and an anxious country. New Jersey did not have Congress at its mercy, he ruled; he called the point about stocks a mere straw man; and Congress, he said bluntly, meant to prevent the "mere existence" of such trusts. If the company was secure the Northwest was not: "the entire commerce of the immense . . . part of the United States between the Great Lakes and the Pacific at Puget Sound will be at the mercy of a single holding corporation. . . ." As the court below had ordered, the Northern Securities Company must be dissolved.

After this victory and others, the government attacked the Standard Oil empire. More than ten states had moved against it under their own antitrust laws by 1906, when federal attorneys filed suit under the Sherman Act. After 15 months of testimony that filled 21 printed volumes, federal judges in St. Louis ordered the oil trust broken up.

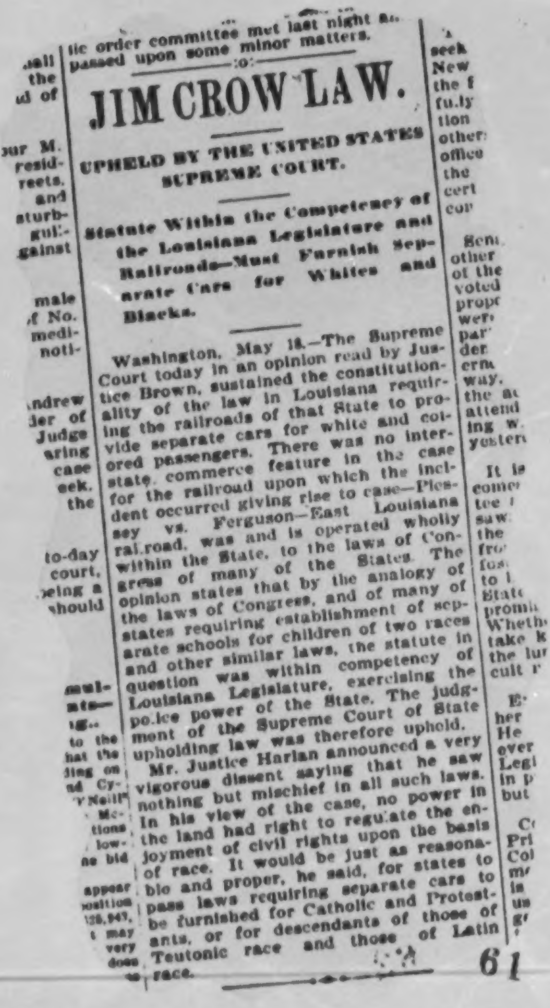
When the Supreme Court reviewed the case, it affirmed the order but altered the law. Congress, said Chief Justice Edward Douglass White, only meant the law to punish "unreasonable" restraint of trade. The "rule of reason" became a rule of law.

"UNREASONABLE, unnecessary and arbitrary," a violation of liberty under the Fourteenth Amendment—thus five members of the Supreme Court held a New York law unconstitutional. This law said bakers must not work more than 10 hours a day or 60 hours a week.

Joseph Lochner had a bakery in Utica, and New York fined him $20 for overworking Frank Couverette. For a second offense, he drew $50 in fines or 50 days in jail. His case reached the Court in 1905.

States, ruled Justice Rufus W. Peckham, must not pass such laws, "mere meddlesome interferences" to keep grown men from taking care of themselves. States have a "police power" to protect the public, but they may not limit such individual rights as liberty of contract: A worker must be free to make his own contract with his employer.

Justice Harlan dissented, citing evidence that bakers suffered eye and lung troubles, that New York might protect their health. And Oliver Wendell Holmes, who had joined the Court in 1902, dissented sepa-



lic order committee met last night a passed upon some minor matters.

:o:

JIM CROW LAW.

UPHELD BY THE UNITED STATES SUPREME COURT.

Statute Within the Competency of the Louisiana Legislature and Railroads—Must Furnish Separate Cars for Whites and Blacks.

Washington, May 18.—The Supreme Court today in an opinion read by Justice Brown, sustained the constitutionality of the law in Louisiana requiring the railroads of that State to provide separate cars for white and colored passengers. There was no interstate commerce feature in the case for the railroad upon which the incident occurred giving rise to case—Plessey vs. Ferguson—East Louisiana railroad, was and is operated wholly within the State, to the laws of Congress of many of the States. The opinion states that by the analogy of the laws of Congress, and of many of states requiring establishment of separate schools for children of two races and other similar laws, the statute in question was within competency of Louisiana Legislature, exercising the police power of the State. The judgment of the Supreme Court of State upholding law was therefore uphold.

Mr. Justice Harlan announced a very vigorous dissent saying that he saw nothing but mischief in all such laws. In his view of the case, no power in the land had right to regulate the enjoyment of civil rights upon the basis of race. It would be just as reasonable and proper, he said, for states to pass laws requiring separate cars to be furnished for Catholic and Protestants, or for descendants of those of Teutonic race and those of Latin race.

MESERVE COLLECTION

"NEXT CAR!" *a conductor directs a Negro family, motioning them to a "Colored Only" coach. Louisiana's Jim Crow Law forbade blacks to sit with whites on trains. Attorney Albion Tourgée (above) argued for Homer Adolph Plessy, a Negro who tested the law by entering a forbidden coach. But the Supreme Court's decision in* **Plessy v. Ferguson** *proved the temper of the 1890's: Races could be segregated if equal facilities were provided (left). For decades after this decision, its famous "separate but equal" doctrine remained a rule of law.*

THE DAILY STATES, COURTESY LOUISIANA STATE MUSEUM (LEFT), AND PAUL HOFFMASTER rately, to say that "a constitution is not intended to embody a particular economic theory," that laws might rest on "novel and even shocking" ideas and be constitutional.

Oregon had passed a law to keep women from working more than 10 hours a day in factories and laundries. Curt Muller, owner of a laundry in Portland, Oregon, was convicted of breaking it; he fought his conviction through state courts to the Supreme Court, relying on Peckham's opinion in *Lochner* v. *New York*. He also claimed that the Oregon statute could not meet the Constitution's demand for "due process of law."

Historically, that had meant "a fair trial." But judges were using it to protect property from laws they found unreasonable.

One reform group wanted the best possible lawyer for Oregon's case. Joseph H. Choate of New York turned it down; he didn't see why a "big husky Irishwoman should not work more than ten hours if she so desired." A famous corporation lawyer in Boston accepted—Louis D. Brandeis.

Studying Peckham's opinion in the Lochner case, Brandeis considered its reference to "common knowledge" that baking was a healthy trade. Boldly and shrewdly, he devoted only two pages of his brief to legal points; 100 cited facts from doctors, health officers, and factory inspectors to show that overworked women fell ill, turned to drink, bore sickly children and then neglected them.

No one had ever submitted such a brief to the Court. But the Justices accepted it, and praised him for it in their unani-

"WHY NOT LET ME IN?" *asks Cuba in a 1902 cartoon. "Puerto Rico is inside." Acquiring both islands from Spain in 1898, the United States gave sovereignty to Cuba. It kept Puerto Rico; the island's canefields (below) produced quarrels among sugar growers and a lawsuit over American tariff duties on foreign goods. When the Supreme Court reviewed this case in 1901, it held that tariffs did not apply to U. S. possessions. Such suits posed the question: How does the Constitution apply to unforeseen problems—does it follow the flag? In these "Insular Cases," the Court declared that the Constitution would protect liberty anywhere under the Stars and Stripes, and would give Congress power to govern the new "American empire."*

LIBRARY OF CONGRESS (BELOW) AND PUCK, LIBRARY OF CONGRESS

mous decision to uphold the law of Oregon.

"When an evil is a national evil, it must be cured by a national remedy," cried Senator Albert J. Beveridge of Indiana. Reformers were demanding change in politics, business, society in general; in response, Congress was assuming a "police power" for the whole country.

Disturbed by reports of filth in meatpacking plants, it passed pure food and drug laws. Shocked by stories of the "white slave trade," it passed the Mann Act. The Supreme Court upheld these laws, and others.

But when President Woodrow Wilson nominated Brandeis for Associate Justice in January, 1916, the *New York Times* thought the Court no place for "a striver after changes." William Howard Taft and Joseph H. Choate called him "not a fit person" for the bench. The Senate wrangled for almost five months before confirming him.

Of all challenges to reform, child labor was the most poignant; "a subject for the combined intelligence and massed morality of American people to handle," said Senator Beveridge. In 1916 Congress passed a law to keep goods made by child labor out of interstate commerce.

As a result, John Dagenhart, less than 14, would lose his job in a textile mill in Charlotte, North Carolina. His brother, Reuben, not yet 16, would lose 12 hours of piecework a week.

Their father asked the federal district court to enjoin the factory from obeying the law and United States Attorney William C. Hammer from enforcing it. As "a man of small means," with a large family, he com-

plained, he needed the boys' pay for their "comfortable support and maintenance." Their work was "altogether in the production of manufactured goods" and had "nothing whatsoever" to do with commerce.

When the district judge granted the injunctions, the U. S. attorney appealed to the Supreme Court. Five Justices thought that in enacting the Child Labor Law Congress had usurped the powers of the states; such laws might destroy the federal system.

Legislation can begin where an evil begins, retorted Justice Holmes, dissenting. If Congress chooses to prohibit trade in "the product of ruined lives," the Court should not outlaw its choice. He added: "I should have thought that if we were to introduce our own moral conceptions where in my opinion they do not belong, this was preëminently a case for upholding the exercise of all its powers by the United States."

Three Justices joined Holmes's dissent. So did Congress; it promptly set high taxes on products of child labor. But in 1922 the Court decided that this law imposed a penalty, not a tax, and held it invalid. Chief Justice William Howard Taft wrote an opinion saying the Tenth Amendment reserves problems like child labor for the states to solve.

Not until 1941 did the Court overrule its child labor decisions. Meanwhile, reformers urged an amendment to protect children, and called the Court a "Supreme Legislature." They pointed out: "The vote of one member of the Supreme Court may exceed the collective power of 435 Representatives and ninety-six Senators, or even of 100,000,000 people."

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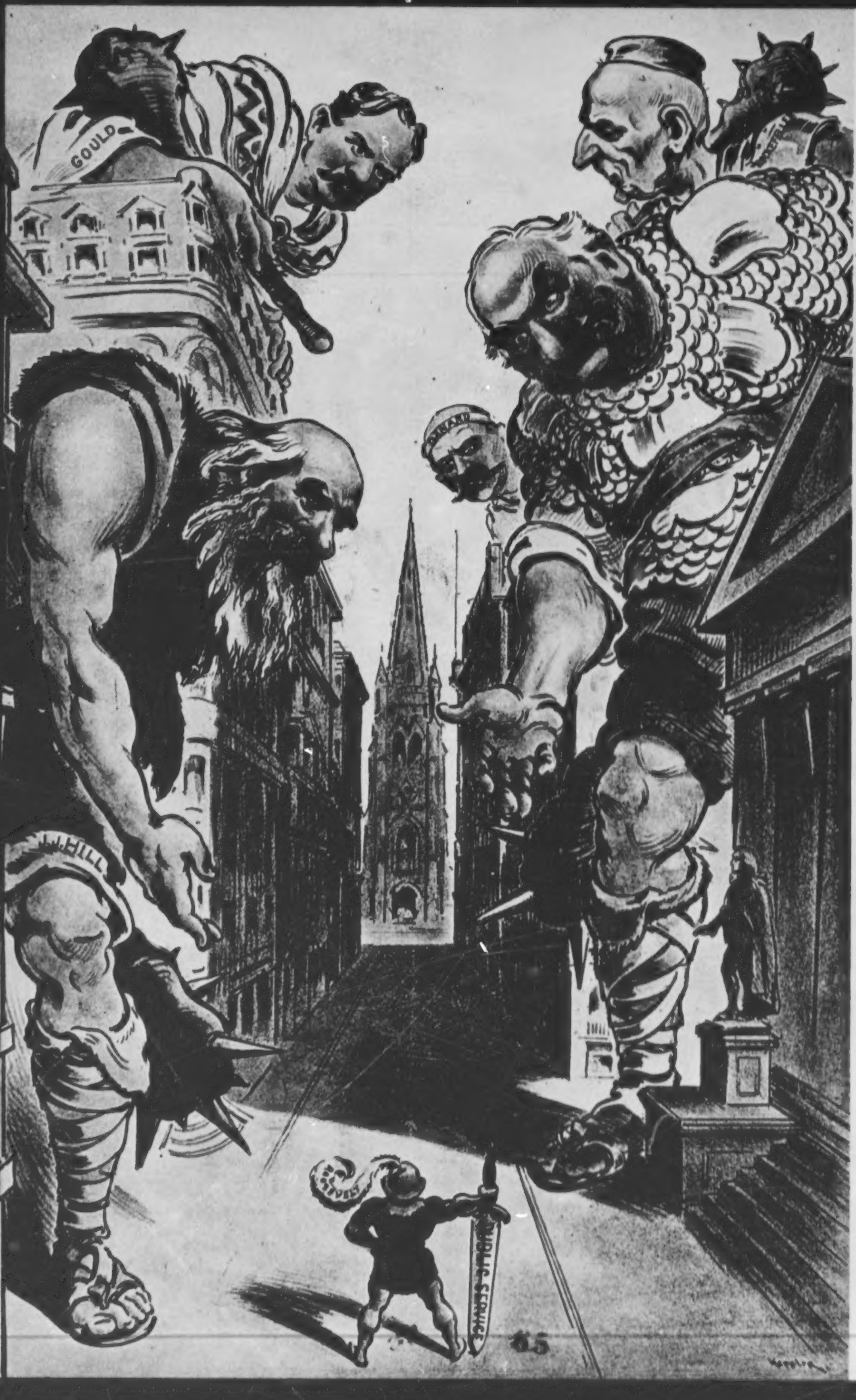
GOULD
J.J. HILL
ROOSEVELT
PUBLIC SERVICE
Keppler

Two months after Congress declared war on Germany in April, 1917, it passed an Espionage Act that punished attempts to obstruct enlistment and discipline in the armed forces. In 1918 it passed a Sedition Act so broadly worded that almost any critical comment on the war or the government might incur a fine of $10,000, or 20 years in prison, or both.

Under the 1917 law, government attorneys filed almost 2,000 prosecutions, among them *United States* v. *"The Spirit of '76."* Only a handful of these cases reached the Supreme Court. Only after the Armistice did the Justices hear a case challenging the law by the First Amendment guarantee of free speech.

Charles T. Schenck and other members of the Socialist Party in Philadelphia were convicted of conspiring to mail circulars to drafted men. In forbidding slavery, these leaflets said, the Thirteenth Amendment forbade the draft.

For a unanimous Court, Holmes wrote that "in many places and in ordinary times" the Socialists would be within their constitutional rights. But the Bill of Rights does not protect words creating a "clear and present danger" of "evils that Congress has a right to prevent." Schenck was sentenced to six months in jail.

But Holmes and Brandeis dissented when the 1918 Sedition Act, and leaflets in English and Yiddish, came before them. Flung from a factory window to the New York streets on August 23, 1918, these papers summoned "the workers of the world" to defend the Russian Revolution against despots. "P. S.," said some, "We hate and despise German militarism more than do your hypocritical tyrants." In the district court one defendant was acquitted; the rest went to prison.

Reviewing law and the leaflets, Holmes remarked, "Congress certainly cannot forbid all effort to change the mind of the country." He saw no national danger in the "usual tall talk" of "these poor and puny anonymities." But he saw danger in persecution of opinions, for "time has upset many fighting faiths" and the national good requires "free trade in ideas." To reach the truth, people must weigh many opinions.

"That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment," Justice Holmes concluded.

"TRUST-BUSTER" *Theodore Roosevelt defies the goliaths of Wall Street. James J. Hill and J. P. Morgan, through a stock monopoly called Northern Securities, controlled railroads in the northwestern states; President Roosevelt ordered a suit against them under the Sherman Anti-Trust Act. In 1904 the Supreme Court affirmed a lower court's judgment breaking up the monopoly. This decision (***Northern Securities v. U. S.***) was a victory for the public interest over the power of the trusts.*

FRENZIED SELLING *racks the stock market in the panic of 1901 when Morgan, Hill, and E. H. Harriman fought to a stalemate for control of railroad shares. Finally agreeing on a compromise, the three formed the Northern Securities Company.*

PUCK, LIBRARY OF CONGRESS (LEFT) AND ADAPTATION FROM HARPER'S WEEKLY

LIBRARY OF CONGRESS

ONE OF THE GREAT DISSENTERS, *John Marshall Harlan won fame as a defender of democracy during 33 years as an Associate Justice, serving from 1877 to 1911.*

He protested sharply in the Standard Oil case, when the Court said that no companies may "unreasonably" restrain trade. The Sherman Act forbids "every" trust or combination in restraint of interstate commerce; Harlan thundered, "The Court has now read into the Act of Congress words which are not to be found there."

Onetime Kentucky slaveowner, Harlan fought for the Union in the Civil War. Appointed to the Supreme Court by President Rutherford B. Hayes, he carried on an ardent battle for civil rights.

Dissenting in **Plessy v. Ferguson,** *he wrote: "...in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens.... The humblest is the peer of the most powerful."*

Good-humored and convivial, he limited his disagreements to the conference room, and enjoyed whist parties with fellow Justices. Oliver Wendell Holmes called him "the last of the tobacco-spittin' judges." A friend said that Harlan retired at night "with one hand on the Constitution and the other on the Bible."

THE OCTOPUS: *Standard Oil, first of the great American trusts, came to symbolize wealth and power running wild, crushing*

"Any agitator who read these thirty-four pages to a mob would not stir them to violence, except possibly against himself," decided one reader of Benjamin Gitlow's "Left Wing Manifesto." But when that pamphlet appeared in 1919, New York authorities arrested Gitlow under the state's criminal anarchy law.

Gitlow applied to the Supreme Court. Seven Justices upheld his conviction and the New York statute. But they assumed—for the first time—that freedom of speech and of the press, which the First Amendment protects from any Act of Congress, are among the rights which the Fourteenth

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industry and government alike, as this 1904 cartoon indicates. When the Supreme Court held in 1911 that the oil monopoly must be broken up for the sake of restoring free competition, the ruling won widespread acclaim as a victory for the public.

Amendment forbids any state to abridge.

Holmes and Brandeis would have set Gitlow free. As Holmes explained, they did not think his "redundant discourse" a public danger. The majority called it "a direct incitement." Holmes replied calmly: "Every idea is an incitement."

Gitlow served three years in Sing Sing prison. Later he became one of the Communist Party's bitterest critics.

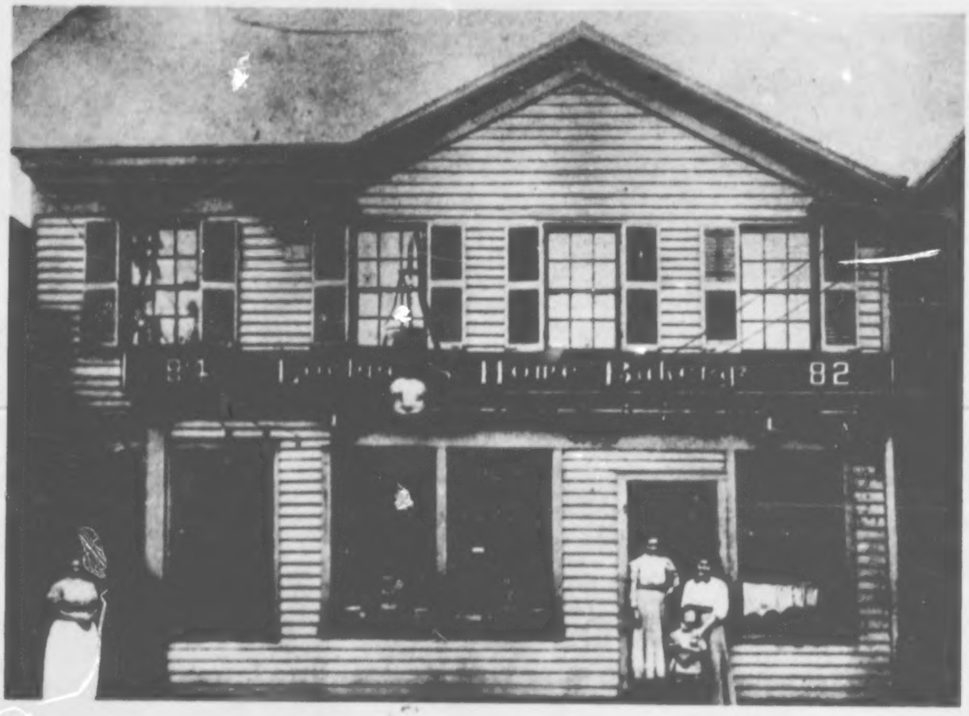
In 1925, while the Court was deciding Gitlow's case, Minnesota legislators were passing a new statute. It provided that a court order could silence, as "public nuisances," periodicals that published "malicious, scandalous, and defamatory" material.

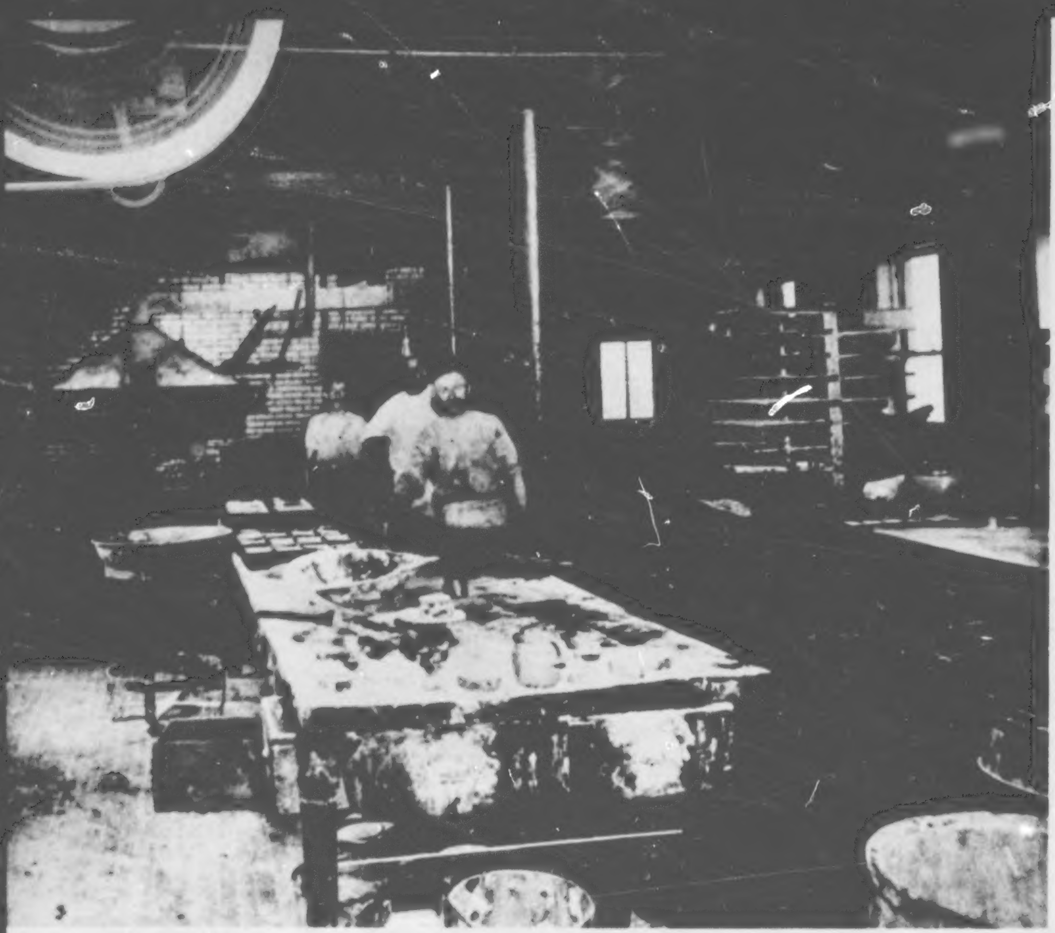
"Unfortunately we are both former editors of a local scandal sheet, a distinction we regret," conceded J. M. Near and his partner in the first issue of the *Saturday Press*, but they promised to fight crime in Minneapolis. They called the police chief a "cuddler of criminals" who protected "rat gamblers." They abused the county attorney, who sued Near; the state's highest court ordered the paper suppressed. Citing the *Schenck* and *Gitlow* decisions, Near's lawyer appealed to the Supreme Court, which struck down the state law.

For four dissenters, Pierce Butler quoted

COLLECTION OF JOSEPH LOCHNER, JR.

CONTROVERSIAL CONFECTIONERY: *Joseph Lochner's Home Bakery in Utica, New York, made legal history in a 1905 Supreme Court case involving working hours. His son, Joseph Lochner, Jr., stands in the bakery's doorway (below) with his mother, left, and a niece. In a damaged interior view (above), they pose with employees. Joseph Lochner, Jr., granted permission to publish these family photographs taken in 1908.*





BAKERY OWNER JOSEPH LOCHNER *(second from right) fought charges that he broke a New York minimum-hour statute. The Supreme Court struck down the law* (**Lochner v. New York**)*, ruling that the Fourteenth Amendment protects "liberty of contract" between workers and employers.*

with evident distaste Near's outbursts at "snake-faced" Jewish gangsters; peace and order need legal protection from such publishers, Butler insisted.

For the majority, Chief Justice Charles Evans Hughes analyzed this "unusual, if not unique" law. If anyone published something "scandalous" a Minnesota court might close his paper permanently for damaging public morals. But charges of corruption in office always make public scandals, Hughes pointed out. Anyone defamed in print may sue for libel, he added emphatically.

However disgusting Near's words, said Hughes, the words of the Constitution controlled the decision, and they demand a free press without censorship. Criticism may offend public officials, it may even remove them from office; but trashy or trenchant, it is liberty unabated at the Supreme Court.

How men use liberty has confronted the Justices again and again, in cases of violence as well as scandal.

Frank Moore faced an Arkansas electric chair; so did Ed Hicks, J. E. Knox, Ed Coleman, and Paul Hall. All five were Negroes. When a federal district court said that it could not help them, they took their petition for a writ of habeas corpus to the Supreme Court, and raised the question: How does the Constitution protect the right to a fair trial in state courts?

Announcing the ruling of the Court, Justice Holmes gave their story as it appeared from the trial record and the sworn statements of other witnesses:

Black sharecroppers in the cotton country around Elaine, Arkansas, decided that their landlords oppressed and cheated them. On the night of September 30, 1919, they

HARRIS AND EWING

PHILOSOPHIC DISSENTER, *Oliver Wendell Holmes, a dashing figure who spoke with the eloquence of a romantic, created new concepts in judicial thinking. As a Justice he inspired generations of lawyers to shun classic attitudes of jurisprudence and recognize that law changes with society's needs. Highly sophisticated, Holmes approached law with a skeptical and objective mind.*

*Chosen for the Court by President Theodore Roosevelt in 1902, Holmes boldly accused his associates of reading into the Constitution economic rather than legal theories. When the Court killed a state law that set minimum hours for bakers (***Lochner*** v. ***New York****), he wrote one of the most famous dissents in history: ". . . a constitution is not intended to embody a particular economic theory. . . . It is made for people of fundamentally differing views. . . ."*

Holmes's life spanned almost 94 years. Wounded three times in the Civil War, he lived to serve the law until 1935. Appointed a Justice at 61, he worked in a world of ideas and values, and took pleasure "just in trying to exhibit some hint of horizons." Master of his profession, he retired from the Court at age 90.

met in the Hoop Spur church to plan ways of getting help from a lawyer. Armed white men attacked them; in the fight that followed, one white man was killed.

News and rumors spread; armed posses hurried to Elaine. Blacks were hunted down and shot, even women working cotton in the fields. On October 1, Clinton Lee, a white man, was killed; Moore, Hicks, Knox, Coleman, and Hall were arrested for murder.

The Governor asked the Army to restore order, and named a Committee of Seven to investigate the riots. When a lynch mob surrounded the jail, soldiers stood guard while the committee promised that the law would execute the five murderers. The mob waited to see what would happen.

Two white men and several blacks swore later that the committee tortured blacks until they agreed to testify against the prisoners. Indicted by a white grand jury for first-degree murder, the defendants faced a white trial jury on November 3; a threatening crowd filled the courthouse and the streets outside. In 45 minutes the trial was over; in two or three minutes the jury gave its verdict: "Guilty."

From the affidavits presented to the Court, Holmes concluded, "if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob."

All appeals in the state courts had failed.

Normally, federal courts will not interfere with the courts of any state on matters of state law. But, warned Holmes, if "the whole proceeding is a mask"—if "an irresistible wave of public passion" sweeps the prisoners through the courts "to the fatal end"—then nothing can prevent the Supreme Court "from securing to the petitioners their constitutional rights."

The district judge should have examined the facts for himself, Holmes ruled, to see if the story in Moore's petition was true and if the state had not given its prisoners a fair trial. *Moore* v. *Dempsey* went back for the district judge to hear.

Eventually, all five defendants went free; so did nearly a hundred other blacks arrested during the riots. Federal judges had a new precedent, citizens a new safeguard. Justice may wear a blindfold, ruled the Supreme Court, but not a mask.

COURTESY MRS. NEILL WHISNANT AND PORTLAND, OREGON, CHAMBER OF COMMERCE (ABOVE) AND BROWN BROTHERS

Alabama militia had machine guns on the courthouse roof, said newspaper reports from Scottsboro; mobs had a band playing "There'll Be a Hot Time in the Old Town Tonight," and those boys in jail had no chance for a fair trial—just because of a trip aboard a freight train.

Victoria Price and Ruby Bates, two white mill workers, were riding a slow freight from Chattanooga on their way home to Huntsville on March 25, 1931. Across the Alabama line, white and black hoboes on board got into a fight; some jumped and some were thrown from the train. Alerted by telephone, a sheriff's posse stopped the train, arrested the nine Negroes still on it, and took them to jail in the Jackson County seat, Scottsboro. Then Victoria Price claimed they had raped her and Ruby Bates.

Doctors found no proof of this story, but a frenzied crowd gathered swiftly. Ten thousand people, many armed, were there a week later when the nine went on trial.

OVERWORKED LAUNDRESS *in the shop of Curt Muller (above, arms folded) led to a Court ruling: States may enforce minimum hours for women (**Muller** v. **Oregon**). Lawyer Louis D. Brandeis (below) revolutionized legal briefs by using medical and sociological facts to show evils of unregulated working conditions.*

LEWIS HINE COLLECTION, LIBRARY OF CONGRESS

"THE NEW HAND." *Young, wide-eyed girl reports for her first day at a textile mill in this cartoon—one of many attacks on the "national evil" of child labor in the early 1900's. Workers often developed tuberculosis in the warm, moist air of poorly ventilated spinning rooms such as the one shown below.*

Because state law provided a death penalty, it required the court to appoint one or two defense lawyers. At the arraignment, the judge told all seven members of the county bar to serve. Six made excuses.

In three trials, completed in three days, jurors found eight defendants guilty; they could not agree on Roy Wright, one of the youngest. The eight were sentenced to death.

Of these nine, the oldest might have reached 21; one was crippled, one nearly blind; each signed his name by "X"—"his mark." All swore they were innocent.

On appeal, Alabama's highest court ordered a new hearing for little Eugene Williams; but it upheld the other proceedings.

When a petition in the name of Ozie Powell reached the Supreme Court, seven Justices agreed that no lawyer had helped the defendants at the trials. Justice George Sutherland wrote the Court's opinion. Facing a possible death sentence, unable to hire a lawyer, too young or ignorant or dull to defend himself—such a defendant has a constitutional right to counsel, and his counsel must fight for him, Sutherland said.

Sent back for retrial, the cases went on. *Norris* v. *Alabama* reached the Supreme Court in 1935; Chief Justice Hughes ruled that because qualified Negroes did not serve on jury duty in those counties, the trials had been unconstitutional.

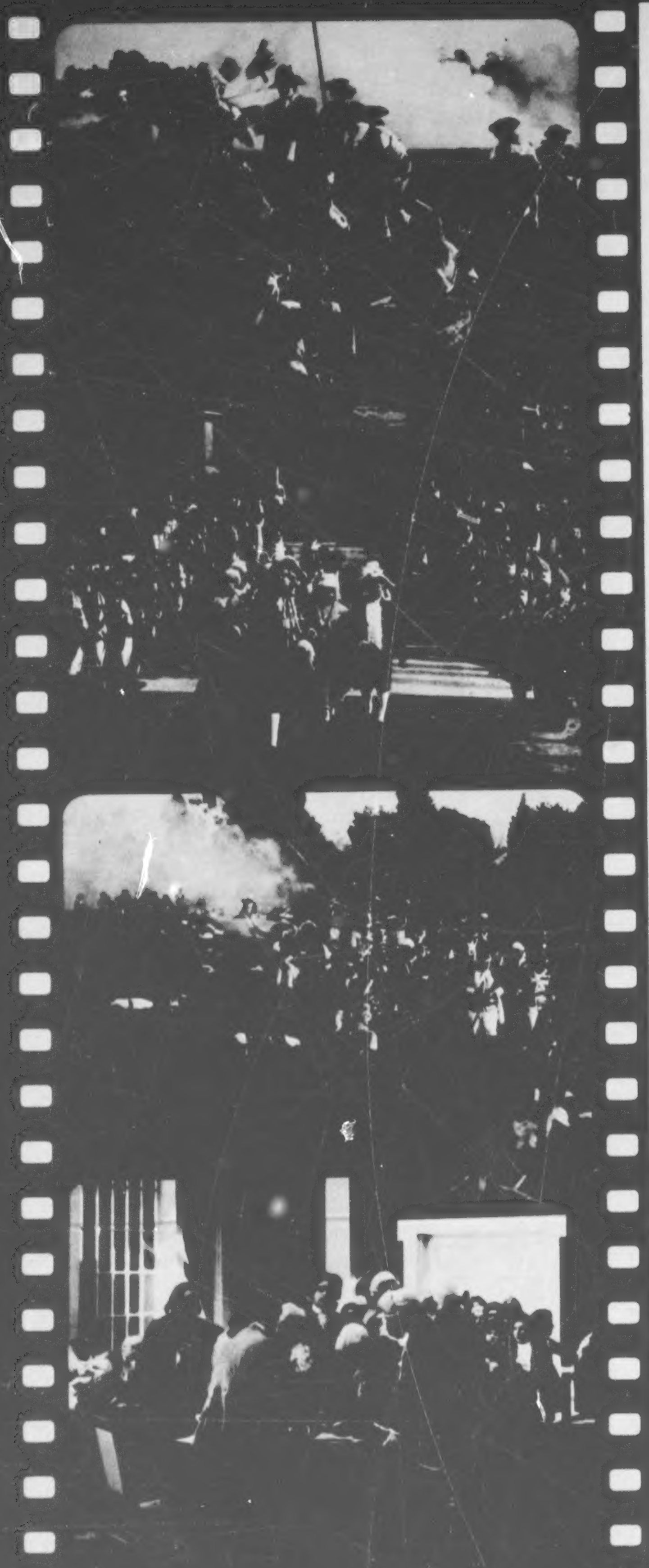
"We still have the right to secede!" retorted one southern official. Again the prisoners stood trial. Finally Alabama dropped rape charges against some; others were paroled; one escaped.

The Supreme Court's rulings stood —if a defendant lacks a lawyer and a fairly chosen jury, the Constitution can help him.

And the Constitution forbids any state's prosecuting attorneys to use evidence they know is false; the Court announced this in 1935, when

BROWN BROTHERS (ABOVE) AND LEWIS HINE COLLECTION, LIBRARY OF CONGRESS

CHOKING DUST *congests the lungs of boys picking slate from coal in a Pennsylvania mine. Below, a Louisiana cannery breaks state law by employing children to shuck oysters. For their work, youngsters usually got only a few cents a day. In 1918 and 1922 the Supreme Court held invalid federal laws against child labor; it overruled these decisions in 1941.*



FILM EPIC *or espionage? The case of* The Spirit of '76 *arose like almost 2,000 others when the 1917 Espionage Act endangered freedom of speech during the feverish days of World War I. Poster at right announces the premiere of* '76 *in Los Angeles. The 12-reel photoplay portrayed events of the American Revolution—clashes between patriots and English and signing of the Declaration of Independence.*

Federal prosecutors charged that the film's producer, Robert Goldstein, a suspected German sympathizer, tried to arouse hatred between America and her World War I ally, England, by inserting scenes showing British soldiers committing atrocities in the Revolutionary War. Officials seized the film and Goldstein was convicted (**United States v. "The Spirit of '76"**).

Under a new law, the 1918 Sedition Act, similar cases in the lower courts further threatened freedom of speech. Only after the Armistice did the Supreme Court review a scant number of these cases; Goldstein's was not among them. His movie script survives in the Library of Congress. But the film is lost. Weeks of intensive search uncovered these rare photographs made during the filming and owned by Charles E. Toberman, a Los Angeles resident, who invested money in the 1917 extravaganza.

COURTESY CHARLES E. TOBERMAN

CLUNE'S AUDITORIUM

America the plaything of an adventuress—or America free!! Which would you prefer?

AUDITORIUM

"THE SPIRIT OF 76"

PRODUCED AT COST OF [illegible]

A chapter of autocratic profligacy and intrigue — patriotism, love and of romance —illustrating vividly that "Truth is Stranger than Fiction"—

Starting Tuesday Evening, Nov. 27—

Limited engagement—two shows daily—[illegible] and [illegible]—[illegible] Mats. [illegible]

ACCOMPANIED BY SPECIAL SYMPHONY ORCHESTRA—40 ARTISTS!!

LOS ANGELES TIMES

Tom Mooney had spent nearly 20 years behind the bars of a California prison.

To rally support for a stronger Army and Navy, San Franciscans organized a huge parade for "Preparedness Day," July 22, 1916. As the marchers set out, a bomb exploded; 10 victims died, 40 were injured. Mooney, known as a friend of anarchists and a labor radical, was convicted of first-degree murder; soon it appeared that the chief witness against him had lied under oath. President Wilson persuaded the Governor of California to commute the death sentence to life imprisonment. For years labor called Mooney a martyr to injustice.

Finally Mooney's lawyers applied to the Supreme Court for a writ of habeas corpus, and won a new ruling—if a state uses perjured witnesses, knowing that they lie, it violates the Fourteenth Amendment's guarantee of due process of law; it must provide ways to set aside such tainted convictions. The case went back to the state. In 1939 Governor Culbert Olson granted Mooney a pardon; free, he was almost forgotten.

"JUSTICE DELAYED is justice denied"—the Supreme Court saw this in 1887, when it was almost four years behind in its work. Appealing to the public, Chief Justice Waite sought "relief for the people against the tedious and oppressive delays" of federal justice. In 1891 Congress passed a law that gave each circuit a court of appeals with power to make a final decision in a great many cases. This law also ended the Justices' trips on circuit duty. Before long the Supreme Court was keeping up with its schedules. But as new laws regulated business and working conditions, and suits challenging these laws reached the courts, overloaded dockets plagued the Justices again.

After Fuller's death in July, 1910, President Taft broke tradition by naming an Associate Justice, Edward Douglass White, for Chief.

When White died in 1921, President Harding made Taft Chief Justice, the only former Chief Executive ever to hold the highest judicial office. Taft was vastly delighted, for the Chief Justiceship, not the Presidency, had always been the honor he wanted most.

Considering the clogged machinery of the federal courts, where the caseload was rising again, Taft remarked: "A rich man can stand the delay . . . but the poor man always suffers." The new Chief Justice set out to improve the whole federal judiciary.

He planned the Conference of Senior Circuit Court Judges, a source of many reforms in judicial practice. The law establishing the conference permitted judges of one area to help elsewhere on courts swamped with work. Then Taft broke tradition to lobby for the "Judges' Bill," passed in 1925.

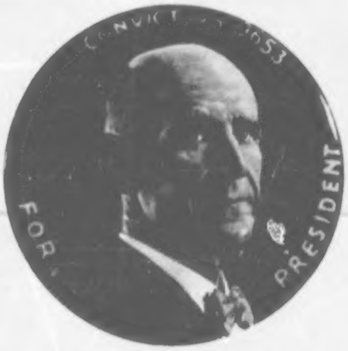
By limiting the right of appeal, this law let the Supreme Court devote its attention to constitutional issues and important questions of federal law. In most cases since 1925, the parties ask permission to be heard; the Justices grant or deny it at discretion.

Before gaining freedom to choose cases, the Court astonished the country in 1923 by a choice of precedents to decide *Adkins* v. *Children's Hospital.* In the majority opinion, Justice Sutherland returned to the "meddlesome interferences" doctrine of *Lochner* v. *New York,* the bakery case of 1905.

Congress had passed a law to guarantee minimum wages for women and children

UNITED PRESS INTERNATIONAL (ABOVE) AND RALPH E. BECKER COLLECTION, SMITHSONIAN INSTITUTION

EUGENE V. DEBS *(speaking above) fought for workers' rights. For his role in the 1894 Pullman strike, he went to jail. Labor bitterly attacked the Supreme Court for letting his sentence stand.*



BEHIND BARS *on a sedition charge, Socialist Debs wins Presidential nomination in 1920. He lost to Warren Harding, who set him free.*

UNDERWOOD & UNDERWOOD

working in the District of Columbia. A children's hospital attacked the law; the case reached the Supreme Court. Five Justices agreed that the law violated the due process clause of the Fifth Amendment and the right to liberty of contract. Sutherland hinted that since women had won the right to vote they were legally equal to men, so Congress should not single them out for special protection.

"It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women," Holmes retorted, dissenting, "or that legislation cannot take those differences into account." On the "dogma" of liberty of contract, he remarked: "pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts."

Taft also dissented. He had always supposed, he said, that *Lochner* had been overruled by later decisions; and, he added, poor workers cannot meet an employer on an equal level of choice.

But Arizona, Arkansas, and New York saw their minimum-wage laws go down under the *Adkins* precedent.

Justice Sutherland always believed that judges were the best guardians of liberty. Chosen for learning, ability, and impartiality, judges were safer guides than any other men. Courts were wiser than crowds.

"I am an optimist in all things," Sutherland said once. He felt sure that evolution's universal laws were making the world better, that meddlesome legislation could only bring trouble. Often he spoke for the famous "four horsemen"—himself, Pierce Butler, James C. McReynolds, and Willis Van Devanter. With them and one other Justice, Sutherland could say what laws were valid.

By 1930 Harvard Professor Felix Frankfurter took stock: "Since 1920 the Court has invalidated more legislation than in fifty years preceding." When Taft retired that year, President Hoover wanted Charles Evans Hughes for Chief Justice. Debating the appointment, one Senator accused the Justices of "fixing policies for the people . . . when they should leave that to Congress," another called the Court "the economic dictator in the United States." But the Senate

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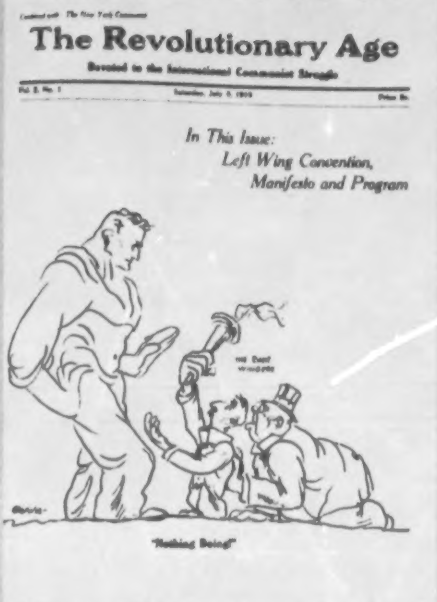


The Revolutionary Age

Devoted to the International Communist Struggle

In This Issue:
Left Wing Convention,
Manifesto and Program

"Nothing Doing"

COMMUNIST CANDIDATES, *William Z. Foster (left) and his running mate Benjamin Gitlow lost miserably in the 1928 Presidential race. In 1925 the Supreme Court had upheld a New York conviction of Gitlow for publishing the "Left Wing Manifesto." This ponderous article, calling workers to rise against capitalism, appeared in* The Revolutionary Age *(above).*

UNITED PRESS INTERNATIONAL

confirmed Hughes for Chief, and Owen J. Roberts for Associate a few months later.

Nicknamed the "roving Justices," Hughes and Roberts sometimes joined the "four horsemen," sometimes joined three Judges more willing to accept laws however meddlesome. These three were Brandeis, Harlan Fiske Stone, and Holmes until he retired in 1932. Benjamin N. Cardozo succeeded him, and often voted with Brandeis and Stone.

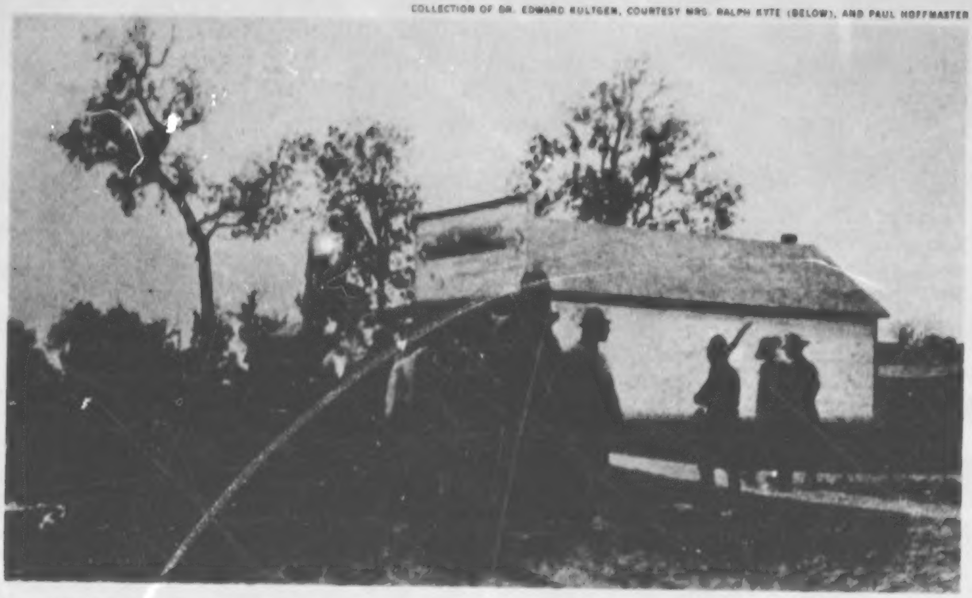
WHEN THE STOCK MARKET collapsed in 1929 and the American economy headed toward ruin, President Hoover called for emergency measures. The states tried to cope with the general disaster. Before long, cases on their new laws began to reach the Supreme Court. Franklin D. Roosevelt won the 1932 Presidential election, and by June, 1933, Congress had passed 15 major laws for national remedies.

Almost 20,000,000 people depended on federal relief by 1934, when the Supreme Court decided the case of Leo Nebbia. New York's milk-control board had fixed the lawful price of milk at nine cents a quart; the state had convicted Nebbia, a Rochester grocer, of selling two quarts and a five-cent loaf of bread for only 18 cents. Nebbia had appealed. Justice Roberts wrote the majority opinion, upholding the New York law; he went beyond the 1887 decision in the Granger cases to declare that a state may regulate any business whatever when the public good requires it. The "four horsemen" dissented; but Roosevelt's New Dealers began to hope their economic program might win the Supreme Court's approval after all.

They were wrong. Considering a New Deal law for the first time, in January, 1935, the Court held that one part of the National Industrial Recovery Act gave the President too much lawmaking power.

The Court did sustain the policy of reducing the dollar's value in gold. But a five-to-four decision in May made a railroad pen-

COLLECTION OF DR. EDWARD HULTGEN, COURTESY MRS. RALPH KYTE (BELOW), AND PAUL HOFFMASTER



U. S. ARMY TROOPS *guard Negroes rounded up near Elaine, Arkansas, after racial violence broke out in the autumn of 1919. Black sharecroppers had felt white landlords were cheating them. Local authorities feared subsequent riots were the beginning of a mass-murder plot.*

sion law unconstitutional. Then all nine Justices vetoed a law to relieve farm debtors, and killed the National Recovery Administration; F.D.R. denounced their "horse-and-buggy" definition of interstate commerce.

While the Court moved into its splendid new building, criticism of its decisions grew sharper and angrier. The whole federal judiciary came under attack as district courts issued—over a two-year period—some 1,600 injunctions to keep Acts of Congress from being enforced. But the Court seemed to ignore the clamor.

Farming lay outside Congressional power, said six Justices in 1936; they called the Agricultural Adjustment Act invalid for dealing with state problems. Brandeis and Cardozo joined Stone in a scathing dissent: "Courts are not the only agency . . . that must be assumed to have capacity to govern." But two decisions that followed denied power to both the federal and the state governments.

In a law to strengthen the chaotic soft-coal industry and help the almost starving miners, Congress had

SCENE OF VIOLENCE: *Black sharecroppers air grievances in Hoop Spur church near Elaine. White men park nearby. Suddenly gunfire explodes into the "Elaine Massacre." Frank Moore and other blacks were sentenced to die for murder. The Supreme Court considered their claim that mob domination barred fair trial, and returned the case to a federal court for investigation (***Moore v. Dempsey***). Eventually, all defendants went free.*

dealt with prices in one section, with working conditions and wages in another. If the courts held one section invalid, the other might survive. When a test case came up, seven coal-mining states urged the Court to uphold the Act, but five Justices called the whole law unconstitutional for trying to cure "local evils"—state problems.

Then they threw out a New York law that set minimum wages for women and children; they said states could not regulate matters of individual liberty.

By forbidding Congress and the states to act, Stone confided bitterly to his sister, the Court had apparently "tied Uncle Sam up in a hard knot."

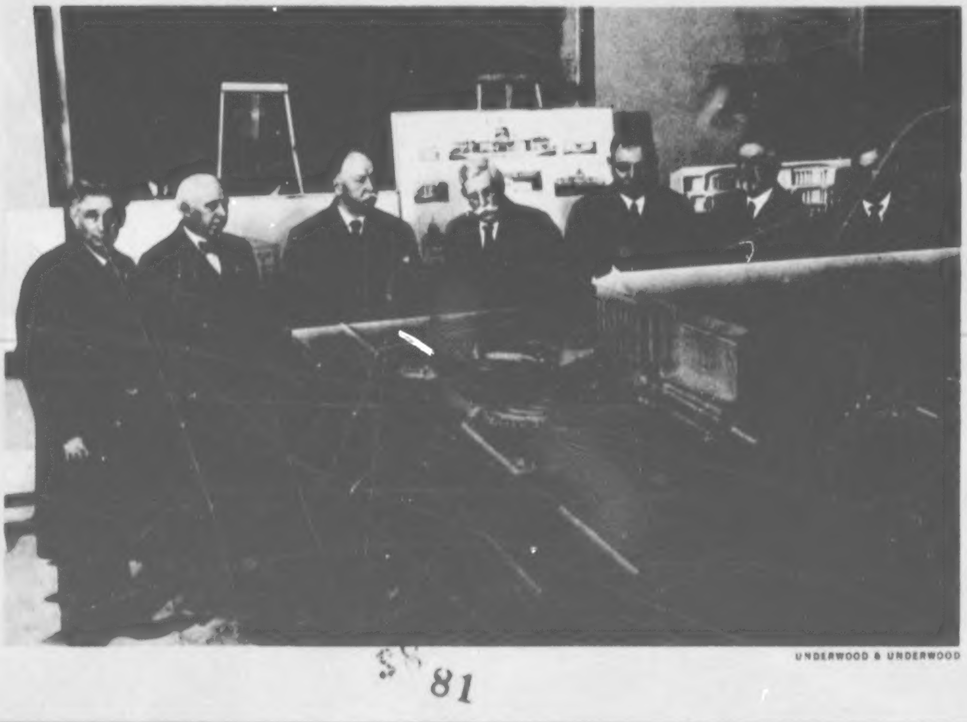
That November Roosevelt won reelection by a margin of ten million votes; Democrats won more than three-fourths of the seats in Congress. The people had spoken. Yet the laws their representatives passed might stand or fall by five or six votes in the Supreme Court. Roosevelt, aware that Congress had changed the number of Justices six times since 1789, sent a plan for court reform to the Senate on February 5, 1937.

Emphasizing the limited vision of "older men," Roosevelt asked Congress for power to name an additional Justice when one aged 70 did not resign, until the Court should have 15 members. (Six were already over 70; Brandeis was 80.) Roosevelt said the Court needed help to keep up with its work.

Even staunch New Dealers boggled at this plan; it incurred criticism as sharp as any the Court had ever provoked. Chief Justice Hughes calmly pointed out that the Court was keeping up with its work. And in angry editorials and thousands of letters to Congress the public protested the very idea of "packing" the Court.

Before the President revealed his plan, five Justices had already voted to sustain a state minimum-wage law in a case from Washington; on March 29, the Court announced that the law was constitutional.

On April 12, Chief Justice Hughes read the majority opinion in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*. It upheld the Wagner Act, the first federal law to regulate disputes between capital and labor. Hughes gave interstate commerce a definition broader than the Jones & Laughlin domain—mines in Minnesota, quarries in West Virginia, steamships on the Great Lakes. Although the case



UNDERWOOD & UNDERWOOD

turned on a union dispute at one plant in Pennsylvania, he said, a company-wide dispute would paralyze interstate commerce. Congress could prevent such evils and protect union rights.

Under these two rulings, Congress and the states were free to exercise powers the Court had denied just a year before. Stubbornly the "four horsemen" dissented. But Van Devanter announced that he would retire. By autumn the fight over the Court was a thing of the past.

As Lincoln said in 1861, the people would rule themselves; they would decide vital questions of national policy. But, as firmly as Lincoln himself, they disclaimed "any assault upon the Court." In one of the Supreme Court's greatest crises, the people chose to sustain its power and dignity.

DECISIONS CHANGED dramatically in the "constitutional revolution" of 1937. So did the Court when President Roosevelt made appointments at last.

In 1937 he named Senator Hugo L. Black; in 1938, Solicitor General Stanley Reed; in 1939, Felix Frankfurter and William O. Douglas, Chairman of the Securities and Exchange Commission. Attorney General Frank Murphy came to the bench in 1940; Senator James F. Byrnes of South Carolina, in 1941.

When Hughes retired that year, Roosevelt made Stone Chief Justice and gave his seat as Associate to Attorney General Robert H. Jackson. How the "new Court" would meet old problems soon became clear.

Congress passed the Fair Labor Standards Act in 1938. It banned child labor, regulated hours, and set minimum wages—25 cents an hour—in interstate commerce. *United States* v. *Darby Lumber Co.* brought the law before the Court in 1941.

If the Justices followed the child-labor decisions of 1918 and 1922, they would veto the law; but all nine called it valid.

But new problems tested the Court as it was defining civil liberties. Danger from abroad made the case for patriotism and freedom in America more urgent; in the "blood purge" of 1934, Adolf Hitler had announced, "I became the supreme judge of the German people."

Under God's law, the Commandments in the Book of Exodus, members of Jehovah's Witnesses refuse to salute a flag.

JUDICIAL ARCHITECT, *William Howard Taft, tenth Chief Justice, streamlined the Nation's system of legal review. At his persuasion, Congress passed the "Judges' Bill" in 1925. This stripped the Supreme Court of routine cases, leaving Justices free to hear only suits that involved major constitutional questions and problems of federal law.*

He won another victory when Congress provided funds for the first Supreme Court Building. With the Justices in 1929 (left), Taft studies architect Cass Gilbert's model. When the cornerstone was laid in 1932, Chief Justice Charles Evans Hughes said of Taft, who had died two years before: "This building is the result of his intelligent persistence."

Taft realized a lifelong ambition when President Harding appointed him Chief Justice in 1921. Taft later wrote, ". . . the court . . . next to my wife and children, is the nearest thing to my heart in life." Before becoming Chief Justice, he served as the twenty-seventh President—the only man to hold both offices.

UNITED PRESS INTERNATIONAL (ABOVE AND BELOW)

BEWILDERED BLACK YOUTHS *walk under guard of state militia toward the Jackson County courthouse at Scottsboro, Alabama. Charged with assaulting two white women, the defendants stood their first trial in 1931 when 19-year-old Ruby Bates (left, on witness stand) said the Negroes had attacked her and a friend. At a later trial in 1933 she swore that her original story was a lie, but her repentant testimony failed to convince the jury. She later led a demonstration to the White House in an appeal for the freedom of the nine Negroes.*

WIDE WORLD (ABOVE); BROWN BROTHERS (RIGHT)

When Lillian and William Gobitas (misspelled "Gobitis" in the record), aged 12 and 10 in 1935, refused to join classmates in saluting the Stars and Stripes, the Board of Education in Minersville, Pennsylvania, decided to expel them for "insubordination." With help from other Witnesses and the American Civil Liberties Union, their father sought relief in the federal courts. The district court and the circuit court of appeals granted it. In 1940 the school board turned to the Supreme Court.

Considering the right of local authorities to settle local problems, eight Justices voted to uphold the school board's "secular regulation." Justice Frankfurter wrote the majority opinion. He told Justice Stone that his private idea "of liberty and toleration and good sense" favored the Gobitas family, but he believed that judges should defer to the actions of the people's elected representatives.

Hitler's armies had stabbed into France when Frankfurter announced the Court's ruling on June 3, 1940; Stone read his dissent with obvious emotion, insisting that the Constitution must preserve "freedom of mind and spirit."

Law reviews criticized the Court for setting aside the issue of religious freedom. Jehovah's Witnesses suffered violent attacks around the country; many states expelled children from school for not saluting the flag.

SCOTTSBORO BOYS *confer with lawyer Sam Leibowitz, who later became a famous New York judge. His masterly defense focused world attention on the Alabama trials where eight of the defendants were convicted and sentenced to death in the electric chair. The spotlight of the Scottsboro cases fell on Haywood Patterson (seated). When Leibowitz and his co-counsel showed that qualified Negroes had been barred from jury duty, and claimed that the youths had been denied a fair trial, the Supreme Court reversed their convictions. Alabama tried them again. In an Alabama courtroom with Leibowitz (opposite), Patterson holds a horseshoe for good luck. It failed him. He was four times tried and convicted of attacking two white girls. In 1948 he escaped prison and was never recaptured.*

West Virginia law required all schools to teach "Americanism," and in 1942 the State Board of Education ordered all teachers and pupils to salute the flag. A child who refused might be punished as a "delinquent," his parents might be fined or jailed.

Walter Barnette and other Witnesses with school-age children sued for a federal injunction against these penalties; in 1943 the Supreme Court heard the case argued.

On Flag Day, June 14, the Court flatly overruled and repudiated the *Gobitis* decision. For the majority, Justice Jackson rejected the idea that a child's forced salute would foster national unity. He singled out as a "fixed star in our constitutional constellation" this fact—"no official, high or petty," can prescribe orthodoxy in politics, nationalism, or religion, for any citizen.

Justice Frankfurter still upheld the state's action against his own "purely personal" view, saying: "One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution."

AGITATOR AND MARTYR *for labor, Tom Mooney, leaves San Quentin in 1939. Charged with murder for deaths in a 1916 Preparedness Day bombing, he escaped the gallows when facts indicated he had been convicted on perjured testimony. In 1918 the Governor of California commuted his sentence to life in prison; 20 years later, he was pardoned.*

WIDE WORLD

"In this solemn hour we pledge our fullest cooperation to you, Mr. President, and to our country," said a telegram to President Roosevelt, December 7, 1941, from the Japanese American Citizens League, at news of the Japanese attack on Pearl Harbor.

By the spring of 1942 such citizens were a vilified minority in their own country. In February the President signed Executive Order 9066, authorizing the War Department to remove "any and all persons" from military areas it might name; Congress approved in a law passed March 21. The Western Defense Command ordered everyone of Japanese ancestry to stay indoors from 8 p.m. to 6 a.m. In May the Army ordered such persons to report for evacuation to "relocation centers"—detention camps.

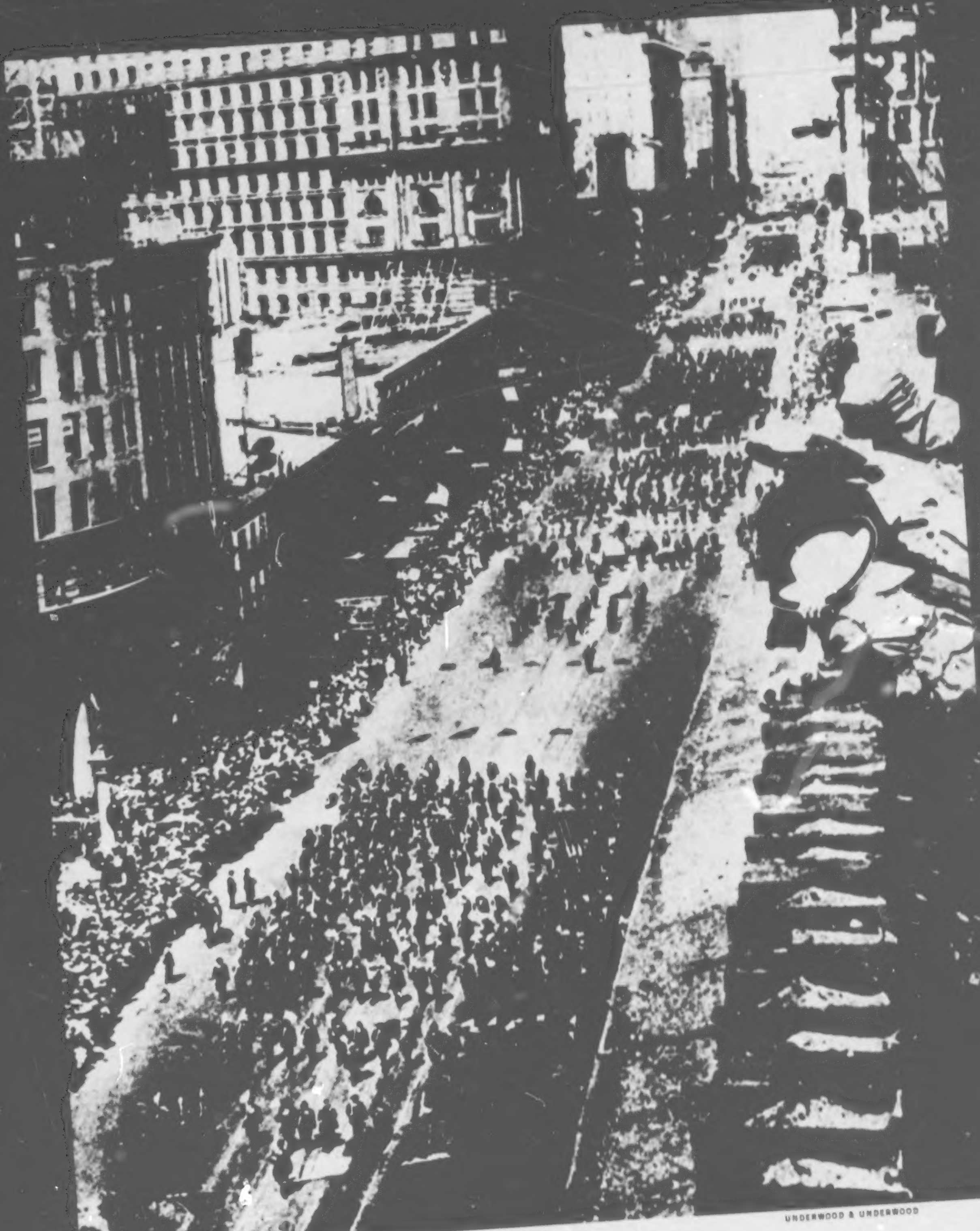
Gordon K. Hirabayashi, a senior at the University of Washington, thought it was his duty as a citizen to disobey both these orders, to defend his constitutional rights. Convicted and sentenced to three months in prison, he applied to the Supreme Court.

Chief Justice Stone spoke for all nine in June, 1943: the curfew was within the war power of the President and Congress. Concurring, Douglas wrote that the Court did not consider the wisdom of the order; Murphy insisted that the government could take such measures only in "great emergency."

In *Korematsu* v. *United States*, argued in October and decided on December 18, 1944, the Court upheld an Army order banishing civilians of Japanese ancestry from the west coast—adults, foster children in white homes, citizens "with as little as one-sixteenth Japanese blood." Justice Black wrote the majority opinion, mentioning Toyosaburo Korematsu's unquestioned loyalty. Orders affecting one racial group are "immediately suspect," said Black, but the Court would accept the order "as of the time it was made," under the war power.

Three Justices dissented, calling the order "a clear violation of Constitutional rights," "utterly revolting among a free people."

That same day, the Court unanimously ordered the Central Utah Relocation Center to release Miss Mitsuye Endo. The War Relocation Authority had conceded she was a loyal, law-abiding citizen, but it had not allowed her to leave the center freely.



UNDERWOOD & UNDERWOOD

TERRORIST BOMBING: *During Preparedness Day parade in San Francisco, spectators and marchers fell when a bomb exploded just off Market Street (above). Mooney claimed he was the man on the parapet at right, more than a mile from the disaster. Convicted nevertheless, he applied to the Supreme Court* (**Mooney v. Holohan**)*. It ruled that the Constitution forbids use in state courts of testimony known to be perjury.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER THOMAS NEBBIA © N.G.S.

Justice Douglas's opinion warned that power to defend the community is not power to detain trustworthy citizens. Federal courts may issue writs of habeas corpus in such cases, he said. "Loyalty is a matter of the heart and mind," added Douglas, "not of race, creed, or color."

AS DEFENSE COUNSEL for Richard Quirin and seven other prisoners, Col. Kenneth C. Royall and Col. Cassius M. Dowell decided that to obey one order of their Commander-in-Chief they had to defy another. Their clients, all German-born, had lived in America but returned before Pearl Harbor to study sabotage techniques at a school near Berlin.

In dense midnight fog on June 12, 1942, a German submarine edged toward Amagansett Beach, Long Island, to land Quirin and three comrades, in German uniform, in a rubber boat. On the beach they met an unarmed Coast Guardsman who pretended to believe their story about fishing, then went off to get help. Armed, his patrol hurried back—to hear U-boat diesels offshore, to dig up cases of TNT and bombs disguised as pen-and-pencil sets, to notify the police and the Federal Bureau of Investigation.

Five nights later, Herbert Haupt, Werner Thiel, Edward Kerling, and Hermann Neubauer landed safely at Ponte Vedra Beach, Florida, from another U-boat. None of the saboteurs damaged his target. On June 27, the FBI announced the arrest of all eight.

President Roosevelt appointed a military commission to try them as spies under the Articles of War, and Colonels Royall and Dowell to defend them. He issued a proclamation closing all civilian courts to such enemies, but the defense decided, in duty to their clients, to disobey this. Challenging the commission's legal authority, they sought writs of habeas corpus from the Court.

After two days of hearing and questioning lawyers for both sides, the Court said that Congress, in the Articles of War, had provided for commissions to try such cases; that the President had lawfully appointed one; that the writs would not issue.

The President announced on August 8 that all the saboteurs had been convicted, six executed. Two who had cooperated with the FBI went to prison at hard labor.

ROCHESTER TIMES-UNION, COURTESY ROCHESTER PUBLIC LIBRARY

STILL SMILING *31 years later, Leo Nebbia, former grocer of Rochester, New York, holds two bottles of milk, which by 1965 had more than tripled in cost since he sold it for nine cents a quart during the Great Depression. He sought review in the Supreme Court after being convicted of breaking a state minimum-price law passed to protect the New York milk industry in the face of damaging price wars. Precedents from the 1920's suggested that the Court would strike down the law.*

But in 1934 five Justices voted to sustain it as a reasonable measure to promote the public welfare (**Nebbia v. New York**)*. Nebbia paid a five-dollar fine.*

The picture at right appeared in a newspaper reporting the outcome of his case. For the picture taken for this book, Nebbia —in 1965 a realtor in Las Vegas— made a special journey to Rochester. He died in June, 1974. Today his son, Vincent, owns the store, four times as large but still at the same location.

In its published opinion the Supreme Court discussed precedents from 1780 to recent years. And it set another precedent —no proclamation from the White House would close the doors of the Court. An executive order would not annul its power to review government actions under law.

Bridges and aluminum plants survived the saboteurs' visit unharmed; a friend and a father did not. From Werner Thiel's days in New York, watched by the FBI, came *Cramer* v. *United States*. For the first time the Supreme Court reviewed a conviction for treason; a five-to-four vote decided that the conviction could not stand.

Justice Jackson, for the majority, explained why. The Constitution outlines the law of a most intricate crime in two sentences "packed with controversy and difficulty," he said. Treason against the United States lies "only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." Unless a person confesses "in open Court" or two witnesses testify "to the same overt Act" of treason, he cannot be found guilty.

The jury that convicted Anthony Cramer, a naturalized citizen, heard how he met Thiel and Kerling, "enemies of the United States," at an inn and a cafeteria. Two witnesses swore that they drank and talked "long and earnestly." But no one proved what they said.

The jury had no evidence that Cramer gave the enemies shelter or advice "or even paid for their drinks." Before the war, Thiel and Cramer had shared "a small and luckless delicatessen enterprise." If they met in public "to tipple and trifle" this did not prove Cramer's treason in law.

Acts innocent by nature may serve a treasonous plan, Justice Douglas insisted for the four dissenters.

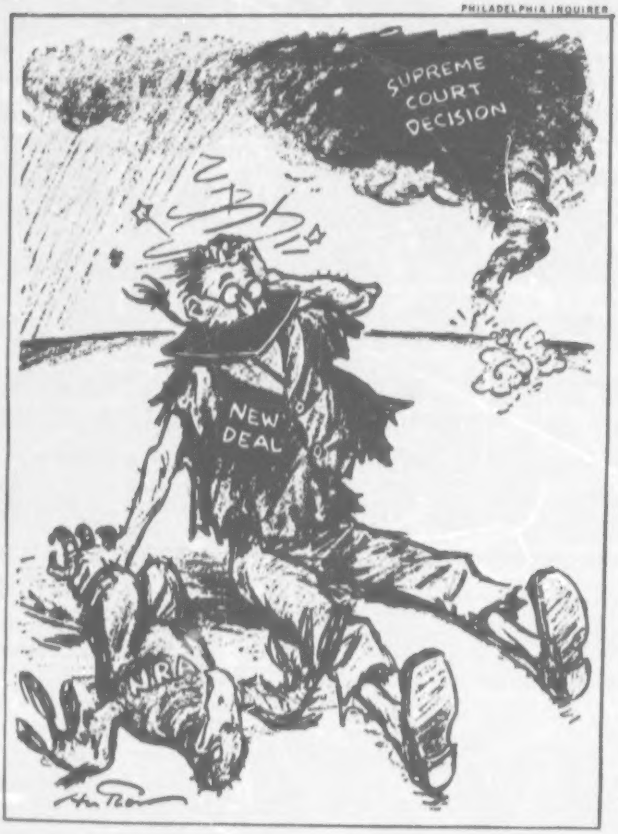
Another jury considered this point when Hans Max Haupt, a naturalized citizen, stood trial for treason. His son Herbert, one of the saboteurs, had already been executed. Witnesses swore that he had sheltered his son for six days in his Chicago apartment; he had helped him buy a car; he had helped him try to get back a job at a plant making lenses for the secret Norden bombsight. All these actions were harmless, even if proved, Haupt's lawyers argued.

UNITED PRESS INTERNATIONAL

UNFURLED "BLUE EAGLE," *symbol of the National Recovery Administration (NRA), rises above a delegation (left) headed by New York City's Mayor Fiorello H. La Guardia, in center foreground. President Franklin D. Roosevelt set up the NRA in 1933 under one of the most sweeping laws ever passed by Congress to regulate commerce among the states.*

As an emergency measure, the NRA attempted, through federal control, to promote the recovery of the Nation's industry, create work for the mass of Great Depression jobless, and provide purchasing power to drain the surplus of food and manufactured goods piled up in warehouses throughout the country.

"What hit me?" wonders the New Deal (right), caught by a whirlwind decision of the Supreme Court.



PHILADELPHIA INQUIRER

VICTORIOUS BROTHERS, *Aaron (left) and Alex Schechter, shoulder lawyer Joseph Heller who won their celebrated lawsuit—the "Sick Chicken Case," a deathblow to the NRA. The government had indicted the brothers, poultry dealers in Brooklyn, New York, for breaking the NRA's "Live Poultry Code" that fostered fair competition. In turn the brothers had claimed that the NRA was unlawful, because Congress had improperly delegated too much legislative power to the President. In 1935 on a day New Dealers called "Black Monday," the Court killed the NRA (***Schechter Poultry Corp. v. U. S.***) and ruled against the Administration in two other important cases. In decisions that followed, the Court continued to strike down Roosevelt's major New Deal legislation.*

LINGERING REMNANT OF NRA: *A "Blue Eagle" poster (below) peels away at the hand of an employee in the Commerce Department, Washington, D. C. Until the Court outlawed the NRA, industries that had voluntarily tried to improve the economy by regulation of production and prices had displayed the "Eagle."*

UNITED PRESS INTERNATIONAL

UNITED PRESS INTERNATIONAL

FIRESIDE CHAT: *President Roosevelt defends his reorganization plan for the Supreme Court during an informal radio broadcast on March 9, 1937. In this retaliation to the Court's hostility toward his New Deal reform measures, Roosevelt labeled the Court a "third House of the Congress—a super legislature."*

He urged listeners to "save the Constitution from the Court and the Court from itself." His proposal, called "Court-packing" by the public, advocated more Judges, who would bring a "steady and continuing stream of new and younger blood" to the Court.

Again the Supreme Court reviewed a conviction; again Justice Jackson wrote the majority opinion. The trial judge had properly instructed the jury, he said, to decide if Hans Haupt meant only to help his son or if he meant to help Germany against the United States. The jury had found him a traitor, and in law they had sufficient evidence.

"JURORS—PLAIN PEOPLE—have manfully stood up in the defense of liberty" on many occasions, wrote Justice Black in 1955. To deprive 3,000,000 persons of the safeguards in trial by jury went beyond the power of Congress, he declared; a law to do so was unconstitutional, and Miss Audrey M. Toth had won against Donald A. Quarles, Secretary of the Air Force.

Honorably discharged from military service in December, 1952, her brother Robert came home to Pittsburgh and got a job in a steel plant. Air Force police arrested him at work in May, 1953, and flew him to Korea for court-martial on charges of murdering a Korean the previous September.

At Miss Toth's petition, a district court issued a writ of habeas corpus, and the Air Force brought back its prisoner. A court of appeals ruled against him, and then the Supreme Court took the case.

Like Toth, any veteran might be hustled off for court-martial "for any alleged offense" in service, Black warned—if the Court found power for Congress to say so. The Court did not. To provide for justice in such cases, said Black, Congress could give jurisdiction to civilian courts by law.

At an Air Force base in Oxfordshire, England, a sergeant's wife was saying she had killed her husband the night before.

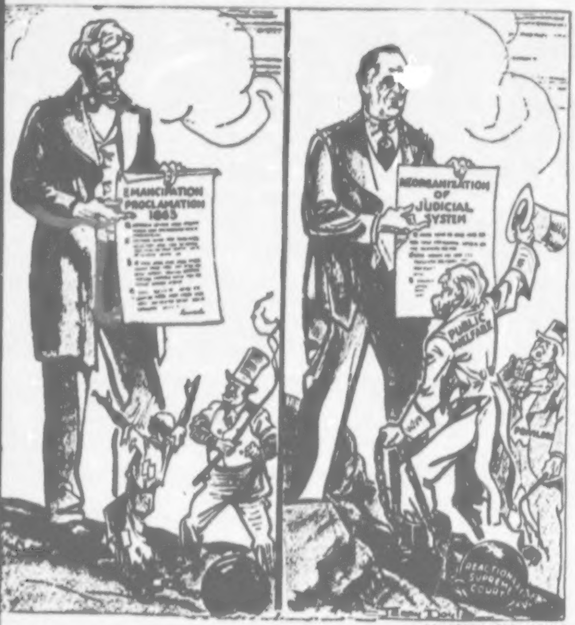
Delusions, thought the Air Force psychiatrist; he knew how she had grown up wretched in a poor and broken home, how her husband squandered money and drank. But he sent men to investigate; they found her husband's body.

Under psychiatric and prenatal care, she waited in a hospital until a court-martial convicted her of premeditated murder and sentenced her to life at hard labor. Flown back to America in 1953, she bore her third child in a federal prison for women.

The Court of Military Appeals ordered a new trial; in 1955 doctors found her sane; then the Supreme Court agreed to hear argument that the Uniform Code of Military Justice denied her constitutional rights to a jury trial under the Sixth Amendment. With her case they took another that raised the same legal issues.

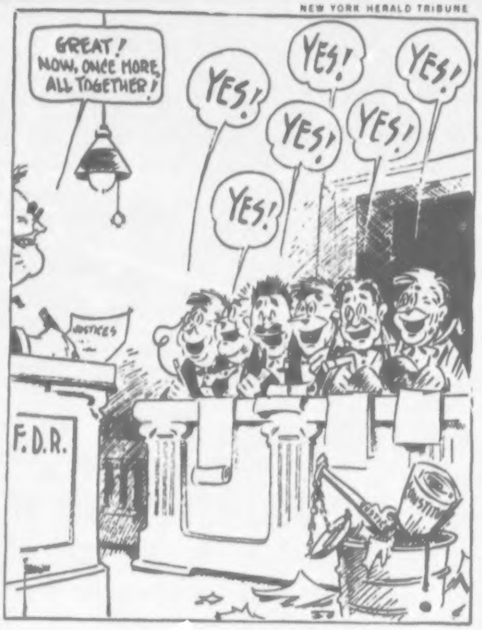
Working under pressure as the term was closing, the Court reached these cases and announced the validity of military trials for civilian dependents abroad. Warren, Black,

CARTOONS PRO AND CON *appeared in newspapers when President Franklin D. Roosevelt tried to add six Justices who would favor his policies. From 1935 until 1937, the Supreme Court pictured below negated New Deal attempts to lift a depressed economy.*

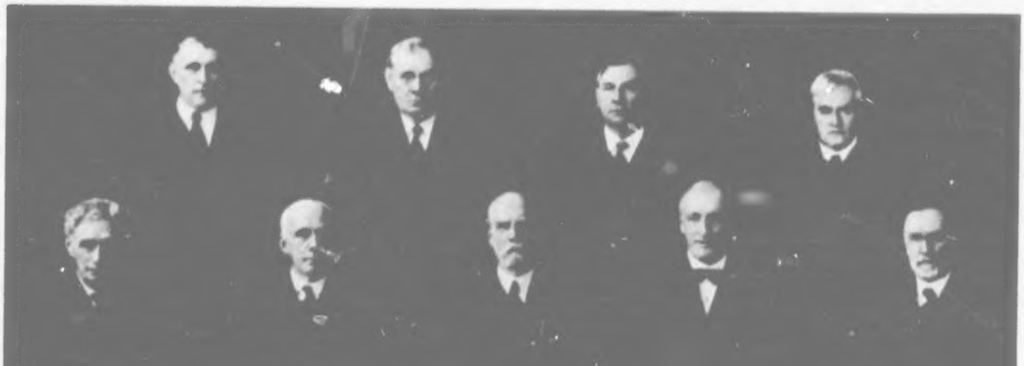

EMANCIPATION PROCLAMATION 1863
REORGANIZATION OF JUDICIAL SYSTEM
PUBLIC WELFARE
REACTIONARY SUPREME COURT

COURTESY JERRY DOYLE

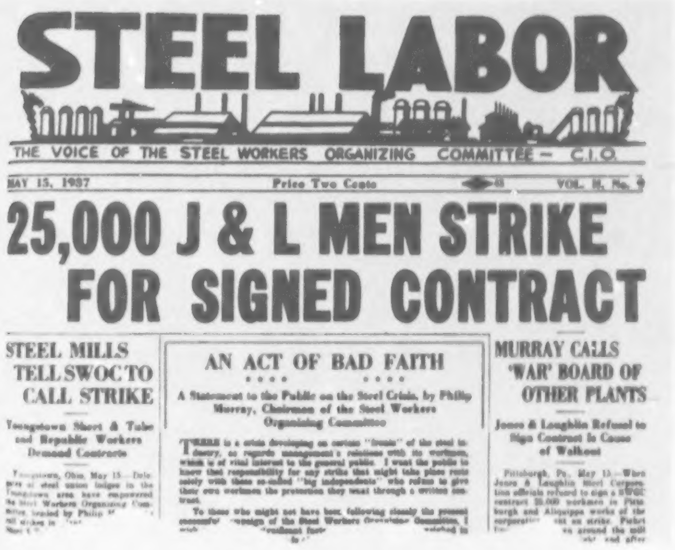
NEW YORK HERALD TRIBUNE


GREAT! NOW, ONCE MORE, ALL TOGETHER!
YES!
YES!
YES!
YES!
YES!
YES!
JUSTICES
F.D.R.

"NINE OLD MEN" OF 1937: *From left are (standing) Owen J. Roberts, Pierce Butler, Harlan Fiske Stone, Benjamin N. Cardozo; (seated) Louis D. Brandeis, Willis J. Van Devanter, Chief Justice Charles Evans Hughes, James C. McReynolds, George Sutherland.*



HARRIS AND EWING



STEEL LABOR

THE VOICE OF THE STEEL WORKERS ORGANIZING COMMITTEE — C.I.O.

MAY 15, 1937 Price Two Cents VOL. II, No. 9

25,000 J & L MEN STRIKE FOR SIGNED CONTRACT

STEEL MILLS TELL SWOC TO CALL STRIKE

Youngstown Sheet & Tube and Republic Workers Demand Contracts

AN ACT OF BAD FAITH

A Statement to the Public on the Steel Crisis, by Philip Murray, Chairman of the Steel Workers Organizing Committee

MURRAY CALLS 'WAR' BOARD OF OTHER PLANTS

Jones & Laughlin Refusal to Sign Contract Is Cause of Walkout

AFTERMATH OF A COURT DECISION: *A steel strike in Pittsburgh (right) in May, 1937, followed a Supreme Court case involving Jones & Laughlin Steel Corporation. Its plant in Aliquippa had fired 12 employees who supported the Steel Workers Organizing Committee, a C.I.O. union. When the Court upheld the Wagner Act, which forbids such action by management, it ordered the workers reinstated. The Court's action confirmed labor's right to vote for the union of its choice. But at first the company refused to consent to an election. Workers went on strike and won. Steelworker (below) casts ballot for union preference.*

and Douglas noted dissent; Frankfurter, a "reservation" of opinion.

Then, as it rarely does, the Court granted a petition for rehearing; in 1957 six Justices agreed to reverse the decisions. Congress could not deprive civilians of the safeguards in the Bill of Rights, Black insisted. Under the new ruling, courts-martial may not try mothers, wives, or children of servicemen for crimes carrying a death penalty.

Extending this rule in a series of cases, the Court stopped court-martial trial of dependents for lesser crimes, and of civilian employees abroad for all crimes.

MEANWHILE, in another long series of decisions, the Court was defining the constitutional rules for fair criminal trials in state courts.

Tortured and whipped by deputy sheriffs, three men confessed to murder; in 1936 the Supreme Court found that their state, Mississippi, had denied them due process of law.

STEEL LABOR, LIBRARY OF CONGRESS (ABOVE LEFT), UNITED PRESS INTERNATIONAL (BELOW LEFT), AND UNITED STEEL WORKERS OF AMERICA, PITTSBURGH

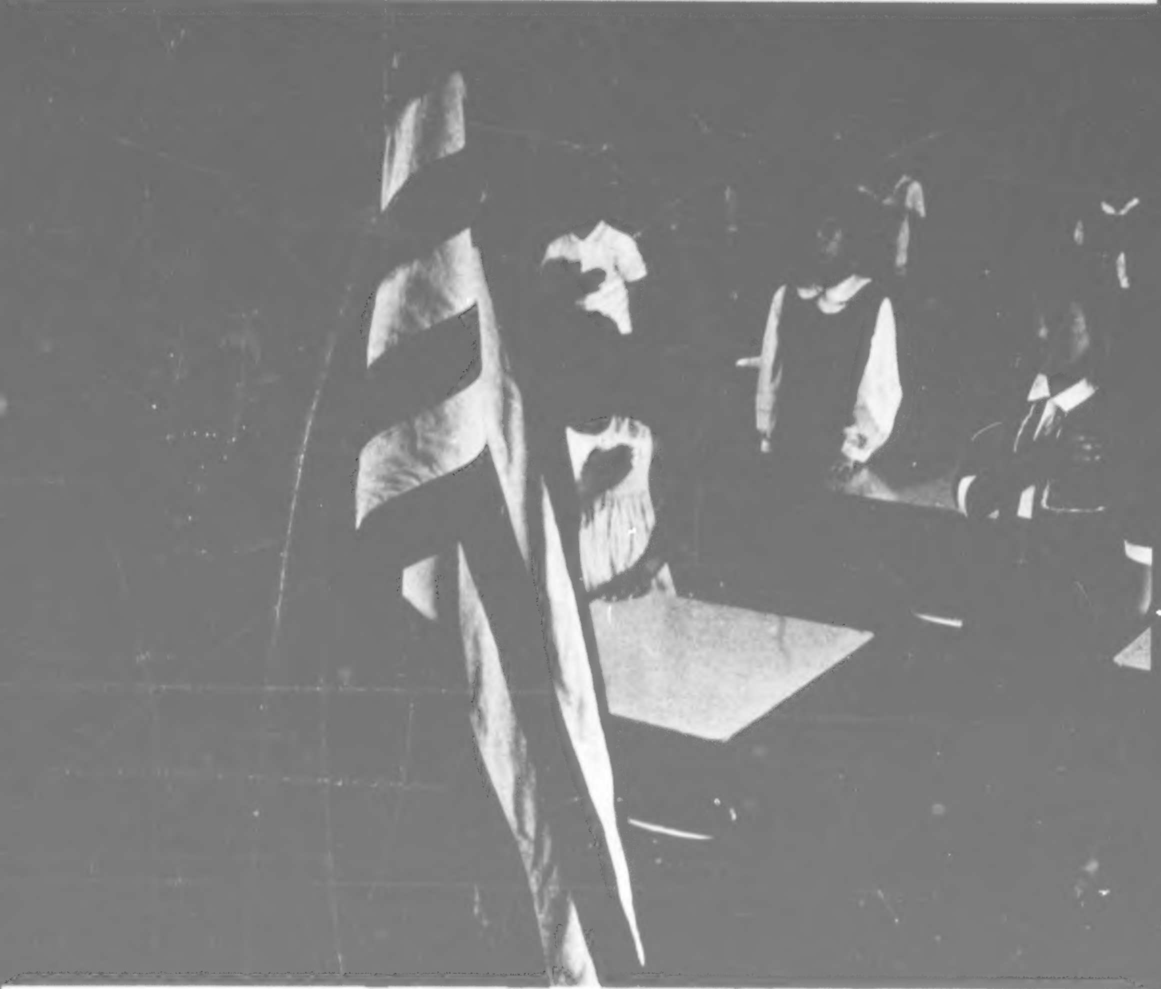
Held for days against Indiana law, questioned for hours by relays of policemen, a man named Watts finally said something that convicted him of murder; in 1949 the Court ruled that such coercion also denies due process—if a man's own words may cost his life he must speak at his own choice.

For himself and a codefendant, a man named Griffin wrote a petition: because of their "porverty," they could not pay for a transcript of their trial for armed robbery and without this record they could not appeal in Illinois courts. Griffin thought the Fourteenth Amendment forbade justice "only for 'Rich.'" So did the Justices, in 1956. They ordered Illinois to give Griffin a free transcript; they gave "equal protection of the laws" a new value. If a man with money can buy a hearing because his state offers a right of appeal, that state must help a man without money.

Accused of breaking into a poolroom in Panama City, Florida, in 1961, Clarence Earl Gideon tried to get a court-appointed lawyer, and failed. He tried to defend himself, and failed. He tried to persuade the Supreme Court to review his case, and succeeded. The Court appointed Abe Fortas of Washington to argue Gideon's claim that without a lawyer no man gets the fair trial the Constitution demands.

Before the Justices, Fortas stressed the confusion any layman would feel when Florida said: "Apply the doctrine of *Mapp* v. *Ohio*. Construe this statute of the State of Florida. Cross-examine witnesses. Call your own witnesses. Argue to the jury."

Florida's attorney argued that the issue should be left to the states. But all nine Justices agreed that no man should have to defend himself against a felony charge, trying to apply precedents he never heard of and construe laws he never read. If a defendant has no money for a lawyer, the state court must appoint one for him. On retrial, a Florida jury acquitted Gideon.



As Justice Potter Stewart had pointed out, Florida wouldn't have let Gideon represent anyone else as an advocate in its courts. But as lawyers and newspapers said, in the Supreme Court Gideon could stand for anyone who happened to be poor.

DOLLREE MAPP may stand for anyone who thinks a government should obey its own laws.

To protect the people's right to security, the Fourth Amendment requires federal officers to have specific and detailed warrants for searches and arrests. The states have had similar requirements.

But for many years officers disregarded this. If they broke into a home and seized property contrary to law, prosecutors could use it as evidence in court to convict its owner—government could, and did, break the law to its own advantage.

In 1914 the Supreme Court announced that if federal officers seize things illegally, federal judges must not admit such things in evidence in their courtrooms. But that decision did not bind state courts. Until 1961 the Court left states free to admit such evidence if they chose.

When police arrived at Mrs. Mapp's home in Cleveland, Ohio, on May 23, 1957, she refused to admit them unless they had a warrant. Three hours later they forced a door, handcuffed Mrs. Mapp for being "belligerent," and searched the house thoroughly, hunting for a person "wanted for questioning" and for evidence of gambling. Finding books they thought obscene, they arrested her for having these.

HANDS AT HER SIDES, *nine-year-old Jana Gobitas (center) abstains from saluting the flag in the third-grade classroom of Bayside School, Milwaukee, Wisconsin, in 1965.*

Unlike her father, William, a fifth grader in the picture taken in 1935 (above, right), Jana never faced expulsion from school for refusing the salute.

In 1943 the Court reversed its ruling in the Gobitas case and said: "Compelling the flag salute and pledge . . . invades the sphere of intellect and spirit which it is the purpose of the First Amendment . . . to reserve from all official control."

JAMES CUNKLIN (LEFT) AND UNITED PRESS INTERNATIONAL

LIKE FATHER LIKE SON AND DAUGHTER, *William and Lillian Gobitas with their father, Walter, between them, believe as Jehovah's Witnesses that saluting the flag is idolatry. Their father charged that compulsory pledges of allegiance to the flag denied his children freedom of religion, a basic constitutional right. In 1940 the Court ruled against him, refusing to be "school board for the country."*

On trial, Mrs. Mapp offered evidence that a boarder had left the books, some clothes, and no forwarding address. The police did not prove they had ever had any warrant. But Mrs. Mapp got a prison sentence. Ohio's highest court upheld it.

Reviewing *Mapp* v. *Ohio,* the Supreme Court decided in 1961 to bar the doors of every courtroom—state as well as federal—"to evidence secured by official lawlessness." The Fourth Amendment sets standards for search and seizure, said its opinion, and the Fourteenth requires judges to uphold them in every state of the Union. In closing the courtroom doors, the Justices guarded the doors of every home.

TO OPEN all public-school doors to Negro children, without discrimination, the Supreme Court gave its decision in *Brown* v. *Board of Education* on May 17, 1954. Chief Justice Warren read the unanimous opinion: ". . . in the field of public education the doctrine of 'separate but equal' has no place."

Inheriting this doctrine from *Plessy* v. *Ferguson,* the Court first heard full argument on its place in public education in 1938, when the Court ordered Missouri to let a black join white students at the state's only law school. By 1951 it had similarly applied the *Plessy* doctrine in three other graduate-school cases.

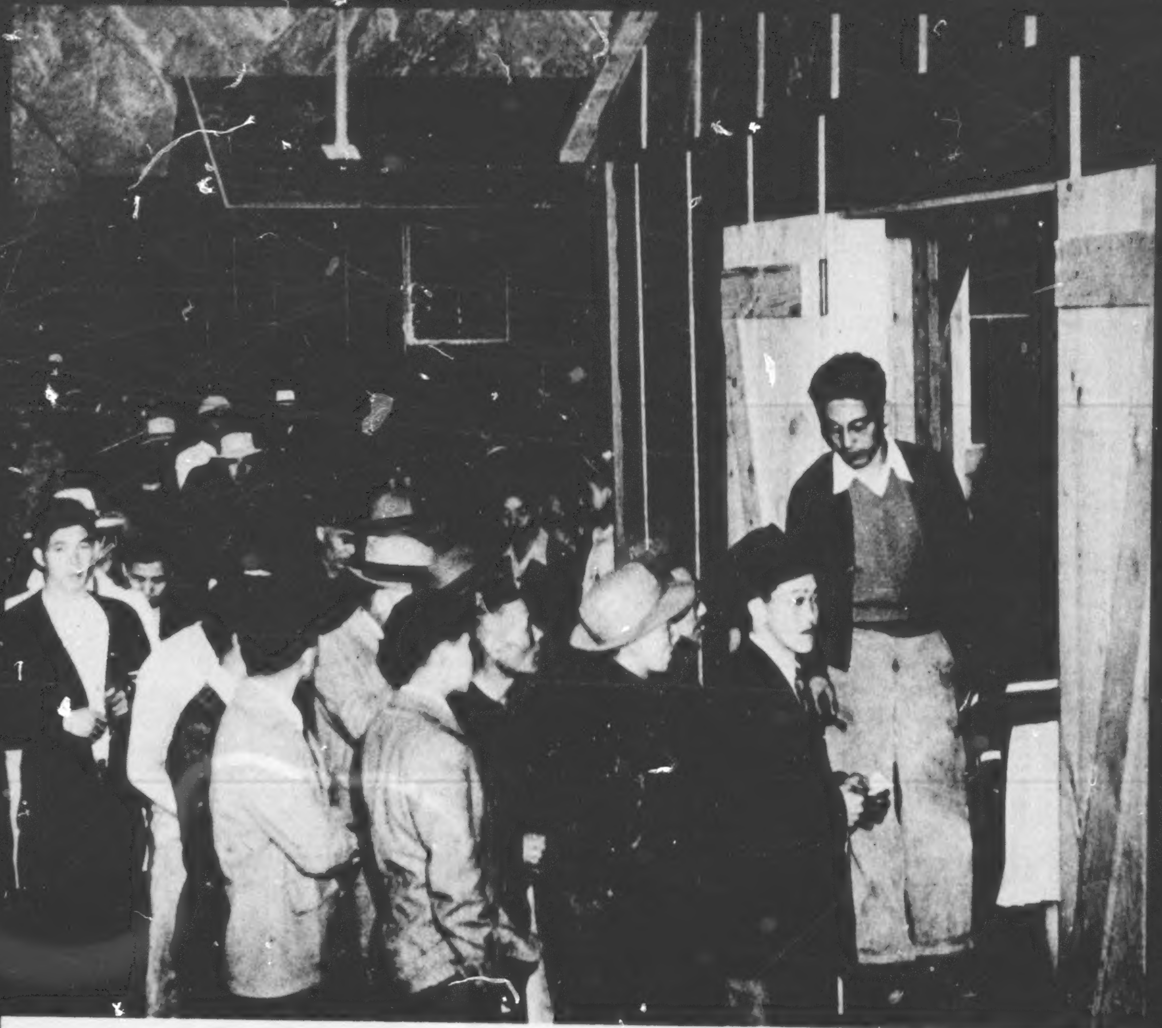
Oliver Brown of Topeka, Kansas, sued the city school board that year in behalf of his eight-year-old daughter

JAPANESE AMERICAN RESEARCH PROJECT, U.C.L.A.

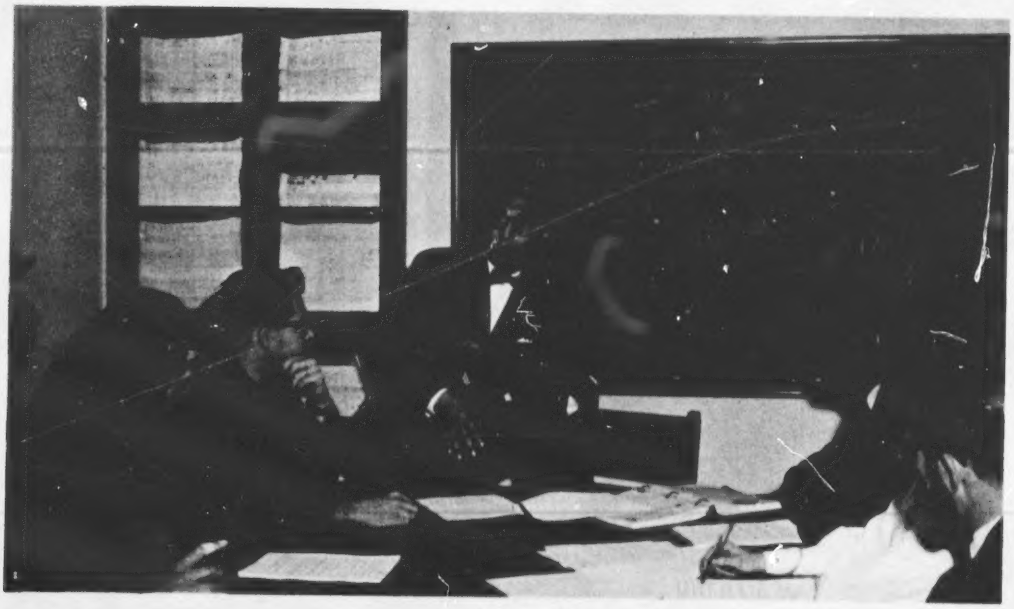
ROUNDUP OF ALIENS *in World War II (below) begins an evacuation of persons of Japanese ancestry from west coast military zones. The government shipped the civilians to detention centers like Owens Valley in California (right). More than 110,000 Japanese-Americans endured bleak camp life; one of them painted the picture above.*

WIDE WORLD

FIGHTER *for civil liberty, Dr. Gordon K. Hirabayashi (right), teaches a class at the University of Alberta in Canada. A college senior in 1942, he refused to obey a military order that required Japanese-Americans to register for evacuation to relocation centers. He claimed that the Army order violated his rights as a U.S. citizen. His plea failed when the Supreme Court (***Hirabayashi* **v.** *U. S.**) held that the threat of invasion and sabotage sanctioned the military restriction of constitutional rights among Japanese-American citizens.*



WIDE WORLD (ABOVE) AND C. N. ROSS



EIGHT NAZI SABOTEURS, *foiled by FBI agents in their attempt to cripple U. S. industrial plants in 1942, faced trial by a military commission. Their lawyers, assigned by President Roosevelt, applied to the Supreme Court, claiming the commission was unlawfully appointed. But the Court upheld the commission under the powers of the President and Congress (Ex parte Quirin).*

TOOLS OF DESTRUCTION: *Nazi saboteurs, in teams of four as shown above, landed from U-boats, one team at Long Island, New York, the other south of Jacksonville, Florida. Each team brought ashore boxes of high explosives (below) that included TNT disguised as coal, incendiary pen-and-pencil sets, fuses, detonators, primers, and an assortment of mechanical and chemical timing devices. Coast Guardsmen discovered the New York team's cache buried with German uniforms in sand dunes.*

EMORY KRISTOF © N.G.S.

Linda Carol. She had to cross railroad yards to catch the bus for a Negro school 21 blocks away; her father wanted her in the white school only five blocks from home.

Three federal judges heard testimony on teachers, courses of study, buildings; they heard lawyers for Brown and 12 other black parents argue that the Kansas law permitting segregation violated the Fourteenth Amendment. Finding the schools substantially equal, the judges ruled against Brown; they said that *Plessy* controlled the case.

Ten-year-old Harry Briggs, Jr., and 66 other black children had filed a similar suit, through their parents, against school authorities in Clarendon County, South Carolina. The county was spending $395,000 for 2,375 white pupils, $282,000 for 6,531 black pupils. All the white students had desks; two black schools had no desks at all.

Like the other school cases, this was a suit in equity: If someone suffers a wrong and the law provides no remedy, he may ask a court of equity for relief; for centuries such courts have had power to fashion special remedies to serve the ends of justice.

The federal court that heard the *Briggs* case ordered Clarendon County to "equalize" its schools as soon as possible; but,

TWO ESCAPED EXECUTION: *Dasch and Ernest Burger lost courage and exposed the sabotage plot to the FBI. Within 14 days of their landing all the saboteurs had been captured. The two informers were spared the electric chair—the fate of the other six. Below, Maj. Gen. Myron C. Cramer, Judge Advocate General of the War Department, holds a shovel used as evidence in the trial of the men.*

GERMAN UNIFORM CAP *crowned the military dress worn by the saboteurs when they landed. Not until they changed into civilian clothes on the beach did the raiders become liable for espionage and the death sentence that conviction carried under the laws of war.*

FEDERAL BUREAU OF INVESTIGATION (UPPER) AND UNITED PRESS INTERNATIONAL

COURTESY ROBERT TOTH

AIR FORCE POLICEMAN *in Korea, Robert Toth (left) was honorably discharged from the service only to be arrested by the Air Force while working in a Pittsburgh steel plant in 1953. Charged in the death of a Korean civilian who had been shot by an Air Force sentry one night when Toth had been on guard duty, the former airman was flown back to Korea to face a military trial. Toth went free when the Supreme Court held that ex-servicemen may not be tried by court-martial for alleged service crimes (***Toth* v. *Quarles***). At right, he hugs his mother and sister on his return to the United States.*

relying on *Plessy*, it refused to order black pupils admitted to white schools, or to rule South Carolina's segregation law invalid.

The Supreme Court heard argument in December, 1952, on the *Brown* and the *Briggs* cases, combining them with an almost identical case from Prince Edward County, Virginia, and one from Delaware.

Delaware's court of equity had found separate black schools inferior and ordered black children transferred to white schools at once; its highest court had sustained the order, and school officials had sought review in the Supreme Court.

Briefs for all the black litigants included data from psychologists and social scientists. Since Brandeis filed his famous brief for Oregon in 1908, lawyers had offered "non-legal" facts to defend a challenged law; now they offered such material to attack state laws. Records from the lower courts printed the testimony of expert witnesses explaining why they thought legal segregation harmed black children.

The Justices heard attorneys for the Negroes contending that discrimination by race violated the Fourteenth Amendment, and attorneys for the states insisting it did not.

In June, 1953, the Court ordered a reargument, inviting the Attorney General of the United States to take part. If historical evidence could show how Congress and the ratifying states meant the Fourteenth Amendment to affect public schools, the Justices wanted to hear it. They also wanted argument on the Court's own equity powers. They heard it in December.

The Justices found history conclusive on one point: Public education has gained importance and scope since 1868. On other points history was uncertain, the Justices concluded. They ruled that segregation in public schools deprives children of "the equal protection of the laws guaranteed by the Fourteenth Amendment."

The May 1954 rulings affected 21 states and the District of Columbia. But the Justices did not order specific changes at once. They gave all the states affected a chance to be heard in yet another argument, this one on appropriate remedies.

Some states filed briefs: Oklahoma explained that it would have to rewrite its tax laws; North Carolina and Florida included long reports on public opinion.

On May 31, 1955, the Chief Justice again spoke for a unanimous Court. The cases would go back to the lower courts; these would review the work of local officials facing the problem of unprecedented change.

In the 12 fat volumes of record, the Justices read one plaintiff's testimony. Telling

WIDE WORLD

"why I got into the suit whole soul and body," Silas H. Fleming said, "the only way to reach the light is to start our children together in their infancy and they come up together." And they read the official comment of the State of Florida: "We think the only answer is time and the patient efforts of those who value democracy more than their personal longings and private prejudices."

TAXATION without representation is tyranny, American colonists were saying angrily in the 1760's. In the 1960's, voters in American cities were saying the same thing.

City voters sent some lawmakers to Congress and the state legislatures, of course; but in many states rural voters—a minority of the population—sent more. People had been moving from farms to cities, but electoral districts had not changed.

One Vermont representative spoke for 49 people in 1950, another for 33,155. In Connecticut, a mere 9½ percent of the people could elect a majority of the state's representatives. By 1955, the Colorado legislature was giving Denver $2.3 million a year in school aid for 90,000 children; it was giving a semirural county $2.4 million for 18,000 pupils.

Although the Supreme Court had decided cases on voting frauds and discrimination in state primary elections, it had dismissed a case on Congressional apportionment in 1946. "Courts ought not to enter this political thicket," Justice Frankfurter had warned; federal judges had obeyed.

Nevertheless, Charles W. Baker of Memphis, Tennessee, and nine other qualified voters filed a suit in equity against Joe C. Carr, Secretary of State, and other officials. They asked a federal court to order changes in the state's election procedure.

The Tennessee constitution said electoral districts should be changed every 10 years so each member of the legislature would represent about the same number of voters. But the General Assembly had not passed a reapportionment law since 1901.

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DIVISION OF CORRECTIONS

CORRESPONDENCE REGULATIONS

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written *on one side only*, and if ruled paper, do not write between lines. *Your complete name* must be signed at the close of your letter. *Clippings, stamps, letters* from other people, *stationery* or *cash must not be enclosed* in your letters.

No. 2 -- All *letters* must be addressed in the *complete prison name* of the inmate. *Cell number*, where applicable, and *prison number* must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- *Do not send any packages without a Package Permit.* Unauthorized *packages* will be destroyed.

No. 4 -- *Letters* must be written in English only.

No. 5 -- *Books, magazines, pamphlets,* and *newspapers* of reputable character will be delivered *only if* mailed direct from the publisher.

No. 6 -- *Money* must be sent in the form of *Postal Money Orders* only, in the inmate's complete prison name and prison number.

INSTITUTION ______________________ CELL NUMBER ______________

NAME ______________________ NUMBER ______________

In The Supreme Court of The United States

Washington D.C.

clarence Earl Gideon	
Petitioner	Petition for a writ
vs.	of Certiorari Directed
H.G. Cochran, Jr., as	to The Supreme Court
Director, Divisions	State of Florida.
of corrections State	No. 890 Misc.
of Florida	OCT. TERM 1961
	U. S. Supreme Court

To: The Honorable Earl Warren, Chief Justice of the United States

Comes now the petitioner, Clarence Earl Gideon, a citizen of The United states of America, in proper person, and appearing as his own counsel. Who petitions this Honorable Court for a Writ of Certiorari directed to The Supreme Court of The State of Florida. To review the order and Judgement of the court below denying The petitioner a writ of Habeus Corpus.

Petitioner submits That The Supreme Court of The United States has The authority and jurisdiction to review The final Judgement of The Supreme Court of The State of Florida the highest court of The State Under sec. 344(B) Title 28 U.S.C.A. and Because the "Due process clause" of the

HUGO HARPER (BELOW) AND NATIONAL ARCHIVES

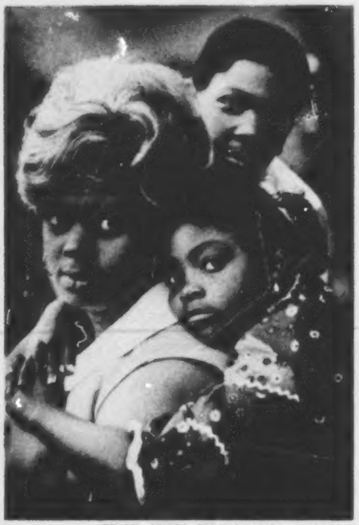
PLEA OF A PAUPER: *Clarence Earl Gideon (far right) signs copies of* Gideon's Trumpet, *the story of a case that heralded new hope for destitute defendants. Charged with breaking into a poolroom, penniless when brought to trial, Gideon asked the court to appoint counsel. But the judge refused, saying that Florida law provided indigent defendants with counsel only if they faced the possibility of the death sentence. Convicted, Gideon spent hours in the prison library consulting law books. Then he penciled the petition (left) asking the Supreme Court to hear his case. The Court appointed attorney Abe Fortas (below) to represent him. In 1963, it decided Gideon had been denied a fair trial, adding that every state must provide counsel to an indigent prisoner charged with a felony* **(Gideon v. Wainwright).** *Later, in a retrial, his lawyer won acquittal for Gideon.*

NATIONAL GEOGRAPHIC PHOTOGRAPHER ROBERT F. SISSON © N.G.S.

When the lower court dismissed *Baker* v. *Carr*, the Supreme Court accepted it. The Justices studied briefs with maps of voting districts, and a special brief for the United States; they heard argument twice. Then, setting precedents aside, the Court decided that minority rule in state legislatures is a matter for judges to review.

Justice Brennan spoke for the majority. If a state lets one man's vote count for more than another's because they live in different districts, that state denies its citizens equal protection of the laws. Citizens wronged by "debasement of their votes" may go to court for help.

In March, 1962, the Court sent Baker's case back to the district judges for them to decide. By November, voters in 30 of the 50 states were suing in state as well as federal courts for new voting districts.



BRIAN LANKER, TOPEKA CAPITAL-JOURNAL

LESSONS IN EQUALITY: *When a white public school turned away Linda Brown (left, later Mrs. Charles D. Smith, of Topeka, Kansas), her father contended that segregated public schools could not provide equal opportunities. Such discrimination infringed his daughter's constitutional rights, he claimed. The resulting case became the most famous in modern Court history. In 1954, unanimously overruling the "separate but equal" decision of the 1896* ***Plessy*** **v.** ***Ferguson*** *case, the Court shed new light on the "equal protection of the laws" provision of the Fourteenth Amendment. In public systems, the Court concluded: "Separate educational facilities are inherently unequal"* ***(Brown*** **v.** ***Board of Education).*** *This ruling affected 21 states with segregated schoolrooms such as the one at right. It also spurred a revolution in the legal status of Negroes in all avenues of life. In 1975, because of this decision, sixth-grader Charles and fifth-grader Kimberly attend desegregated neighborhood schools—with classrooms like the one below.*

LARRY KEIGHLEY (ABOVE) AND WERNER WOLFF, BLACK STAR

A case from Georgia brought Congressional apportionment before the Court again; it ruled in 1964 that Congressional districts should be equal in population.

Alabama appealed to the Court when district judges rejected three reapportionment plans for the state. Sustaining the lower court, the Justices listed new rules for a state legislature. Both houses must be based on population, they said; and if districts differ in population, the Court would not find the differences valid for geographic, historic, or economic reasons alone.

In these cases Justice Harlan dissented. (President Eisenhower had appointed him in 1955 to the Court his grandfather had served.) Harlan insisted that a state might prefer to give some areas more voice in lawmaking than population alone would warrant, and the Court should respect a state's decision. On Congressional districts, he found no constitutional mandate for courts to take action; and Justice Stewart agreed with him.

"ALMIGHTY GOD, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country."

As supervisors of the state's public education under New York law, the Board of Regents wrote this classroom prayer in 1951. Formal religion has no place in public schools, they said, but "teaching our children, as set forth in the Declaration of Independence, that Almighty God is their Creator" would give the "best security" in dangerous days. They recommended their prayer to local school boards; some accepted it, including the board in New Hyde Park, which voted in

1958 for the prayer to open each school day.

Some parents objected; they feared that if government may regulate or require any religious practice in a public school it gains power over matters that should be free.

The classroom ceremony offended families who were Jewish, Unitarian, members of the Society for Ethical Culture, and nonbelievers. Steven I. Engel and four other parents asked a New York court to order the prayer discontinued. New York's constitution and the Nation's forbid any "establishment of religion" by law, they insisted.

William J. Vitale, Jr., and other board members replied that the prayer gave moral training for good citizenship. On request, they said, any child would be excused.

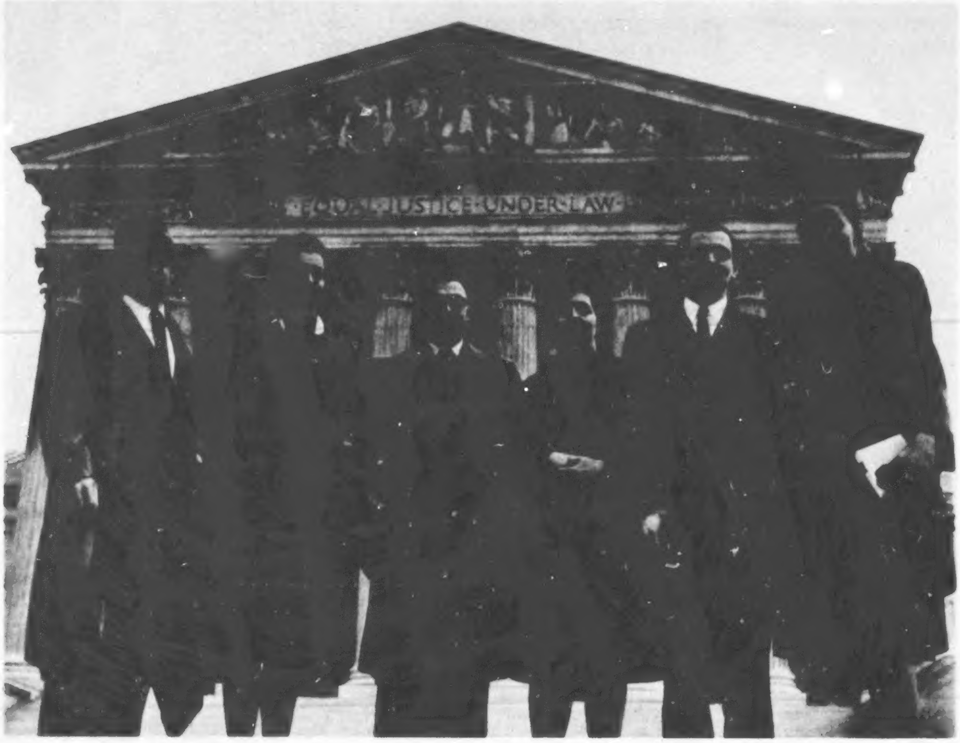
By adopting the Regents' prayer, schools did not prefer or teach religion, New York courts held; but schools must not compel any child to pray. In 1961 the Supreme Court took *Engel* v. *Vitale* for review; it let religious groups and the Regents file special briefs as *amici curiae*, "friends of the court." The briefs outlined the controversy.

For Engel: Americans have been a devout people; but to study their history is one thing, to worship God is another. By composing and instituting a prayer, the 13 Regents—all laymen and state officials—had taken on the work of clergymen. James Madison had denied "that the Civil Magistrate is a competent Judge of Religious truths or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention . . . the second, an unhallowed perversion of the means of salvation." On these grounds, Engel said, the First Amendment forbids Congress to establish religion, the Fourteenth forbids the states.

For Jewish groups: Prayer can never be "nonsectarian." Differences in its forms

UNCONSTITUTIONAL ACT OF FAITH: *Grade-school students begin the day with a prayer. New York residents claimed that when state officials composed a school prayer they trespassed on the religious guarantees of the First Amendment. Emphasizing separation of church and state, the Supreme Court in 1962 outlawed state prayers in public schools (***Engel* v. *Vitale***).*

WIDE WORLD (BELOW) AND NATIONAL GEOGRAPHIC PHOTOGRAPHER EMORY KRISTOF © N.G.S.



OPPOSED TO BIBLE READING *and recitation of the Lord's Prayer as daily rituals in public schools, Edward Schempp (left) and his family charged that these practices amounted to establishment of religion by the state. In 1963 the Court held both of the religious observances unconstitutional in public schools.*

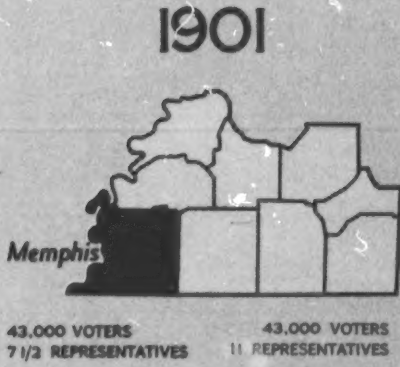
and words go to the essence of faith; no governmental official has constitutional power to enter this realm.

For the Regents: As far as separation of church and state permits, schools must be moral and spiritual guides against threats from "an atheistic way of life," from rising delinquency and crime.

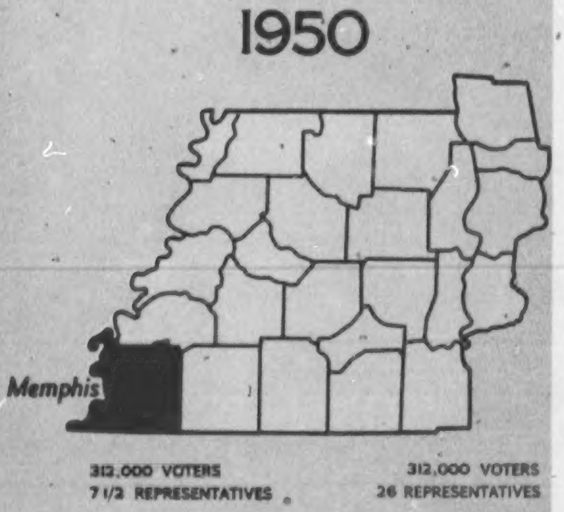
For Vitale and the board: Public schools should not have to give up "any recognition—even on a voluntary basis—of the existence of a Divine Being."

For parents agreeing with the board: No group should "force all others to conform to their views" and demand "the total and compulsory elimination of God's name from our schools."

Justice Black gave the Supreme Court's opinion in June 1962: A "solemn avowal of divine faith," the Regents' prayer was indeed religious—and unconstitutional, because the authors of the Constitution thought religion "too personal, too sacred, too holy," for any civil magistrate to sanction. No government should compose



BATTLE OF THE BALLOT: *Unequal voting rights in Tennessee cast a Court case. In 1901 eight counties had as many people as Memphis and elected near[illegible] same number of representatives. By 1950 M[illegible]s' population equaled that of 24 counties. Under the state constitution the city should have gained more representatives, but did not; so the rural vote counted almost four times as much as the urban. Reviewing city voters' complaint that this denied them equal protection of the laws, the Court in 1962 held that judges should hear and decide such claims under the Fourteenth Amendment (Baker v. Carr). The late Chief Justice Earl Warren looked back upon this as the most important and influential single decision in his 16 years on the court. It opened the way to enunciation (in Reynolds v. Sims) of the "one person, one vote" principle and its enforcement by court order in many related cases across the Nation.*



official prayers for Americans to recite.

Dissenting, Justice Stewart thought the decision denied children the chance to share "the spiritual heritage of our Nation."

When lawyers for two other school boards appeared in 1963, they praised the ruling in *Engel* v. *Vitale* but insisted that it did not apply to their cases. In their schools official prayers had no place, although pupils read the Holy Bible and recited the Lord's Prayer every day unless parents wanted them excused.

Professed atheists, Mrs. Madalyn E. Murray of Baltimore and her son William challenged the school exercises for favoring belief over nonbelief. Mr. and Mrs. Edward L. Schempp of Abington, Pennsylvania, wanted to teach their children Unitarian beliefs without "contradictory" practices at school. As taxpayers and parents of students, they had standing to sue.

Reviewing these two cases, the Supreme Court declared again that no state may prescribe religious ceremonies in its schools, that the Constitution stands between the official and the altar.

PUBLIC ANGER over the Supreme Court's powers and decisions ran high in Marshall's day and in Taney's. Charles Evans Hughes saw a third great crisis. Not so long ago, billboards and bumper stickers called for Congress to impeach Earl Warren; attacks on the Court still smolder and occasionally flare.

Such turmoil comes when the Nation confronts new difficulties and new dangers, as well as new notions of what freedom means. The Justices review a critical case arising under the Constitution, as citizens debate the issues it involves. Then the Court rules on questions affecting—and dividing—the whole people. The people judge the Court's opinion for themselves; inevitably they disagree.

Critics have accused the Court of pampering Communists and criminals. Southerners have denounced its rulings on race and civil rights; fresh protest has come from northern metropolises, divided into white suburbs and inner-city ghettos. Legislators have debated constitutional amendments to overrule the Court on reapportionment.

NATIONAL GEOGRAPHIC PHOTOGRAPHER ROBERT S. OAKES © N.G.S.

EIGHT-MAN COURT *of the October 1969 term illustrates the overlapping service of individual members. From left, seated: the late Justices John M. Harlan (who served with two Chief Justices) and Hugo L. Black (who served with five); Chief Justice Burger; Justice Douglas (who has served with five) and Brennan (two). Standing: Justices Marshall, Stewart, White (all with two). The seat vacated when Justice Abe Fortas resigned remained empty while the Senate rejected two nominations by President Nixon; it was later filled by Justice Blackmun.*

Some clergymen and laymen have charged that the Court favors godlessness, corruption of young minds by smut, murder of the innocent unborn.

With equal force and passion, others have answered that the Court should decide such cases as these, and insisted that it has decided them rightly.

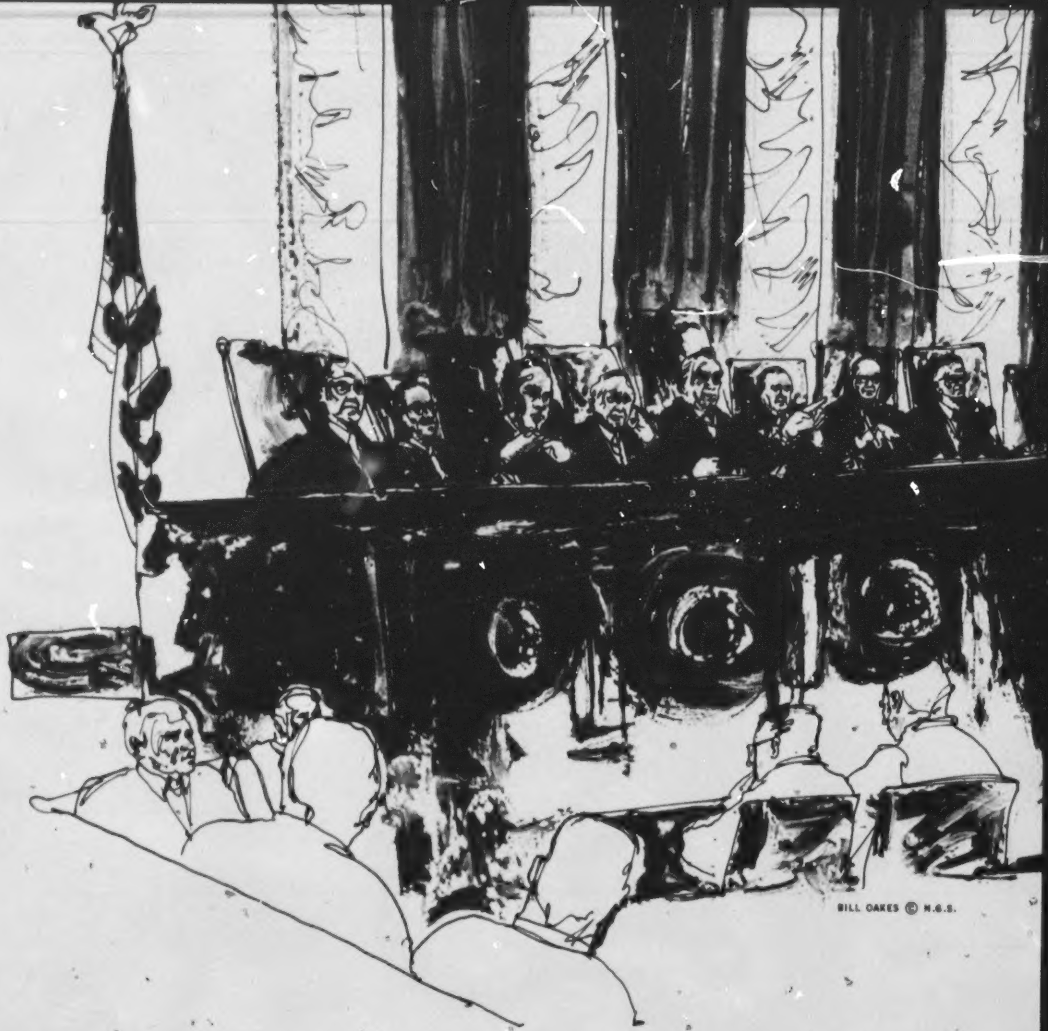
So more than once the quiet home of the Supreme Court has been the center of a national storm. Almost certainly it will be again in years to come.

On the value of life itself under law, the Court has now spoken in landmark cases. In *Furman* v. *Georgia*, announced on June 29, 1972, it found that the death penalty as applied in that case would be cruel and unusual punishment, forbidden by the Eighth Amendment. For 631 men and 2 women waiting on death row in 32 states, the decision brought hope for new sentences or, in a few instances, new trials.

Concurring, Justice Byron R. White spoke after ten years of "almost daily exposure" to details of capital crimes. He found "no meaningful basis" for distinguishing the many cases in which the defendants were spared death from the few in which they were not.

Dissenting, Justice Harry A. Blackmun thought it beyond a judge's power to strike down the laws in question—even when such cases bring "an excruciating agony of the spirit."

In *Roe* v. *Wade* and *Doe* v. *Bolton*, announced on January 22, 1973, the Court set new limits on state power to regulate abortion, holding statutes from Texas and Georgia invalid under the due process clause. For the first three months of pregnancy, it ruled, a state must leave the decision on abortion to a woman and her physician. For the stage beginning with the fourth month, the state may set regulations



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U. S. V. NIXON: *Sketched in the Courtroom on July 8, 1974, Special Prosecutor Leon Jaworski (above) argues the cause for the United States. On the bench, from left: Powell, Marshall, Stewart, Douglas, Burger, Brennan, White, Blackmun (Rehnquist did not participate). At left, gestures stress a point on executive privilege by Mr. Nixon's counsel, James D. St. Clair.*

A unanimous Court, while finding constitutional basis for the President's claim of privilege, ruled that he must produce evidence for the trial of former aides in the so-called Watergate scandals.

reasonably related to maternal health. Finally, for the stage after "viability," the state may prohibit abortion unless the mother's health is endangered.

Dissenting, Justice White called this decision an "extravagant exercise of the power of judicial review." In the majority opinion, Justice Blackmun acknowledged the Supreme Court's full awareness "of the deep and seemingly absolute convictions that the subject inspires."

Both landmark decisions came after the Court considered long and careful *amicus* briefs on what happens to the prosperous and to the poor, the many and the minorities. Both left the Justices divided. Both provoked bitter controversy among citizens.

As both turn on questions that trouble the spirit, both raise issues that will come before the Court again—under a Constitution made, as Justice Holmes once noted, "for people of fundamentally differing views." While it remains the supreme law of the land, Americans will argue about its checks and balances of power, its guarantees of liberty.

No case presents these themes more clearly than *United States, Petitioner,* v. *Richard M. Nixon, President of the United States,* argued and decided in the summer of 1974. Felony charges had been lodged against former advisers of the White House; the President himself faced impeachment. Only by impeachment, argued his counsel, could the law apply to him. When the prosecutor of the felony charges tried to obtain evidence in Mr. Nixon's possession, the President claimed an absolute privilege to keep from the courts anything he chose to withhold.

As in John Marshall's day, the Justices agreed to review a case of great import and political delicacy—with the two key precedents rulings by Marshall himself. Sitting on circuit in the trial of Aaron Burr for treason, Marshall had held that a President "may be . . . required to produce any paper in his possession," although a judge might agree that some papers contain matter unfit for public disclosure. And of course there was Marbury's case.

Now a unanimous Court ruled that the President must obey a judge's order to provide evidence needed for fair trial of those accused; executive privilege, in this instance, must yield to due process of law.

AS LONG AS the Supreme Court remains the living voice of the Constitution, it will have to say what the law is. This is "the very essence of judicial duty," by John Marshall's own definition. Other citizens will have to speak, with the Justices, to defend the principle James Madison proclaimed: "While we assert for ourselves a freedom . . . we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us."

For the Supreme Court alone cannot sustain the heritage of equal justice under law. Although the Court symbolizes the judicial power of the United States in action, it shares its highest duty with everyone who loves liberty. And, as Abraham Lincoln asked in 1861, "Why should there not be a patient confidence in the ultimate justice of the people?"

Within the Court Today

"I THOUGHT they would, well, talk Latin or something." The visitor had heard argument at the Supreme Court for the first time, in *U. S.* v. *Nixon.* On another occasion, a high-school girl reported "shock" that a black-robed Justice could rock comfortably in his high-backed chair and actually laugh out loud. And a family on a summer tour, admiring the Great Hall outside the Courtroom, noticed a white-haired man in a blue business suit: Chief Justice Warren E. Burger, who paused in his errand to shake hands and welcome them.

"Our remoteness," says the Chief Justice, "is a result, not an objective; it's just that we're so busy. . . ."

To its majestic setting and moments of sheer ritual, the Supreme Court brings its distinctive manner of working in public—by listening to one lawyer at a time and asking tough questions. Its atmosphere mingles informality with dramatic tension. In a city of bureaucracy, it keeps the directness of a group of nine. It cherishes its courtesies.

Pleasant-spoken guides convey this mood when they explain the Courtroom to members of the public. No, there's no jury; there are no witnesses; the Justices don't need them because they review the record of what happened in some other court.

The guide points out the sculptured marble frieze overhead: to your right, on the south wall, great lawgivers of the pre-Christian era; to your left, those of Christian times. A note of pride enters his voice as he indicates the panel over the main entrance, the one the Justices face: Powers of Evil—Corruption, Deceit—offset by Powers of Good—Security, Charity, Peace, with Justice flanked by Wisdom and Truth.

"The Republic endures and this is the symbol of its faith." So spoke Chief Justice Charles Evans Hughes on October 13, 1932, when he joined President Herbert Hoover in laying the cornerstone of the new Supreme Court Building. In those days many had cause to doubt his words; since 1929 the country had been sinking deeper into the Great Depression.

Five months later the Chief Justice administered the Presidential oath to Franklin Delano Roosevelt. By October 7, 1935, when the Supreme Court convened for the first time in its new home, the national mood was less desperate.

Nations and empires have vanished since those days; but the Republic, though embattled or distraught in a tumultuous world, has endured. So has its faith, a stubborn one. So has the Supreme Court, surviving its epic collision with F.D.R. and more than one onslaught in recent years.

Gleaming bone-white and austere among its distinguished neighbors on Capitol Hill, its stately façade evoking the long glory of ancient Rome, the Supreme Court Building imposes a mood of decorum. Nothing less than a bedrock issue such as *U. S.* v. *Nixon* or the question of the death penalty brings out spectators to crowd the white plaza before it and shout encouragement to counsel as they enter—and even then the sense of order strikes observers.

That aura of formality is no accident.

When architect Cass Gilbert submitted his design in May 1929, he planned "a building of dignity and importance suitable . . . for the permanent home of the Supreme Court of the United States." Gilbert had been chosen by a commission led by Chief Justice William Howard Taft. Associates were Cass Gilbert, Jr., and John R. Rockart, with executive supervision by David Lynn, Architect of the Capitol.

WITH PRACTICED COURTESY, *a staff member explains details of the Courtroom to visitors—from the Justices' chairs of varying styles, chosen for individual comfort, to the ceiling's motif of lotus blossoms, emblems of endurance. In the frieze above the bench, the central figures symbolize the power of government and the majesty of the law.*

JOSEPH H. BAILEY, LARRY D. KINNEY, NATIONAL GEOGRAPHIC STAFF © N.G.S.

JOSEPH H. BAILEY © N.G.S.

Into the building the architects put about three million dollars' worth of marble. For the exterior walls alone a thousand freight-car loads of flawless stone came from Vermont—including a single 250-ton slab destined for sculptor James E. Fraser's allegorical figures at the entrance.

Georgia marble was chosen for the outer walls of four courtyards that divide the building into a cross-shaped center core and a gallery of offices and corridors. Nearly square, the resulting structure is 92 feet high and stretches 385 feet on its longest side. The interior walls are faced with Alabama marble.

Opposite the formal entrance, at the east end of the aptly named Great Hall, is the Court Chamber proper—82 by 91 feet, with a coffered ceiling 44 feet high. Gilbert walled this imposing room with Ivory Vein marble from Spain. For the 24 massive columns he insisted on marble of a particularly delicate tint, called Silver Gray or Light Sienna Old Convent, from the Montarrenti quarry in Italy. An expert made a special trip to the quarry to see whether it would be possible to remove such huge chunks as the plans demanded.

From Italy the rough stone went to a firm of marble finishers in Knoxville, Tennessee, who dressed and honed the blocks into 72 slightly tapered cylinders, 11 feet in circumference at the widest. Three sections went into each 30-foot column, topped by an Ionic capital.

Darker marble from Italy and Africa gives color to the floor, and against this rare stone the room gains richness from its fittings: tones of red in carpet and upholstery and heavy draperies, highly polished luster in solid Honduras mahogany, gleaming bronze lattice-work in gates to the side corridors. Beyond the windows, fountains sparkle in the sun. And since 1973, new lighting, new paint, and new gilding have brought the ceiling to a brilliance time had dimmed since its installation.

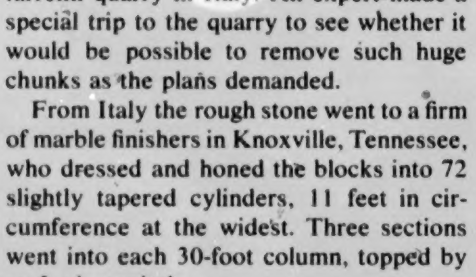
Neither Taft nor the architect lived to see their dream building completed. Taft died in 1930, Gilbert four years later.

Not everyone liked the new building. Associate Justice Harlan Fiske Stone, who later became Chief, at first called it "almost bombastically pretentious . . . wholly inappropriate for a quiet group of old boys such as the Supreme Court." One of the old boys said he and his brethren would be "nine black beetles in the Temple of Karnak." Another—undoubtedly thinking of exotic pomp rather than domestic party symbols—remarked that the Justices ought to enter it riding on elephants.

Such comments suggest how different men have regarded their own remarkable positions of power, prestige, and responsibility in the life of the Nation. Off the bench their successors show a similar concern—to keep a sense of human perspective in their marble temple. As Chief Justice Burger has said, "This is a select company—not because we are all-knowing, but because we were selected and we are here."

The President appoints Justices with the advice and consent of the Senate, which takes its duty soberly. Since 1789 the Senate has rejected roughly one out of five formal nominations, and argued others at length. For a solid reason: As one Justice says, "Once we're here, they can't fire us."

Article III of the Constitution provides that the Justices, and all other federal judges, hold their offices "during good Behaviour." (And while they serve, their pay cannot be cut.) They may resign at any time, or retire when eligible. Once confirmed, however, they may be removed—in accordance with



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TRIUMPHS OF MANKIND *in developing a just society blazon the bronze doors at the main west entrance. Eight relief panels trace the growth of law from ancient Greece and Rome to the young United States. Each door weighs 6½ tons, and slides into a wall recess when opened. Tortoises (left), chosen as symbols of righteousness and longevity, support bronze lamp standards in the foyer.*

JOSEPH H. BAILEY, LARRY D. KINNEY, NELSON H. BROWN © N.G.S.

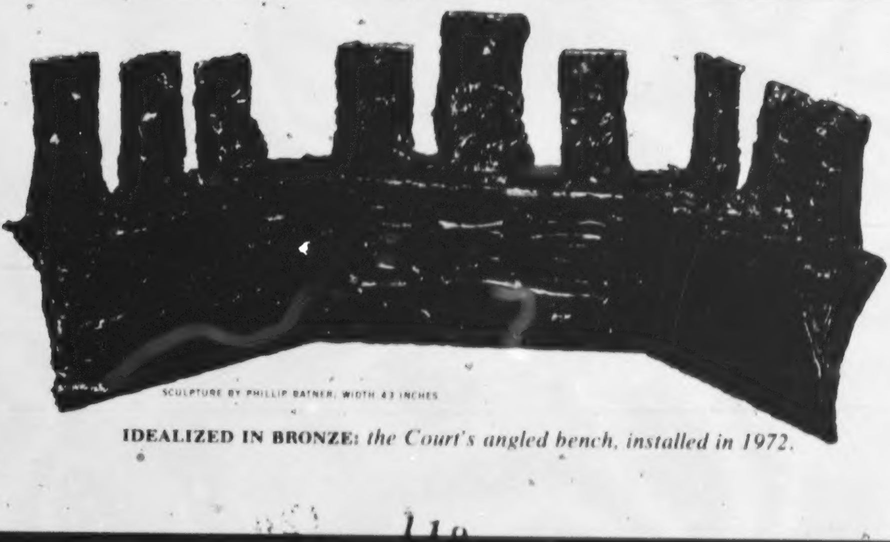
Article II—only by "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." In effect, they serve for life. Never in the Nation's history has a Justice left the bench convicted.

When he takes his oath to uphold the Constitution and dons his robe, a Justice can enjoy an almost Olympian detachment. Members of the Court shun much of Washington's social life, and find it prudent to keep relationships with legislators and Presidents courteous but at arm's length. Of course, the Court's budget must be supported before Congress, and codes of judicial conduct urge Justices to express their views on matters affecting the administration of the judicial system. But by the very nature of his position, a Justice escapes the pressures and tensions that vex many public servants: the orders or requests from other officials, the demands from constituents, the tactful or ham-handed approaches from lobbyists. At the Court the strongest pressure takes a subtle form, felt in the mind or conscience. Associate Justice William J. Brennan, Jr., has defined it as the awareness of fallible human beings "that their best may not be equal to the challenge."

A single close case exerts its pressure. A rising caseload heightens it. The pressure makes for an air of aloofness, but that is part discipline, part illusion.

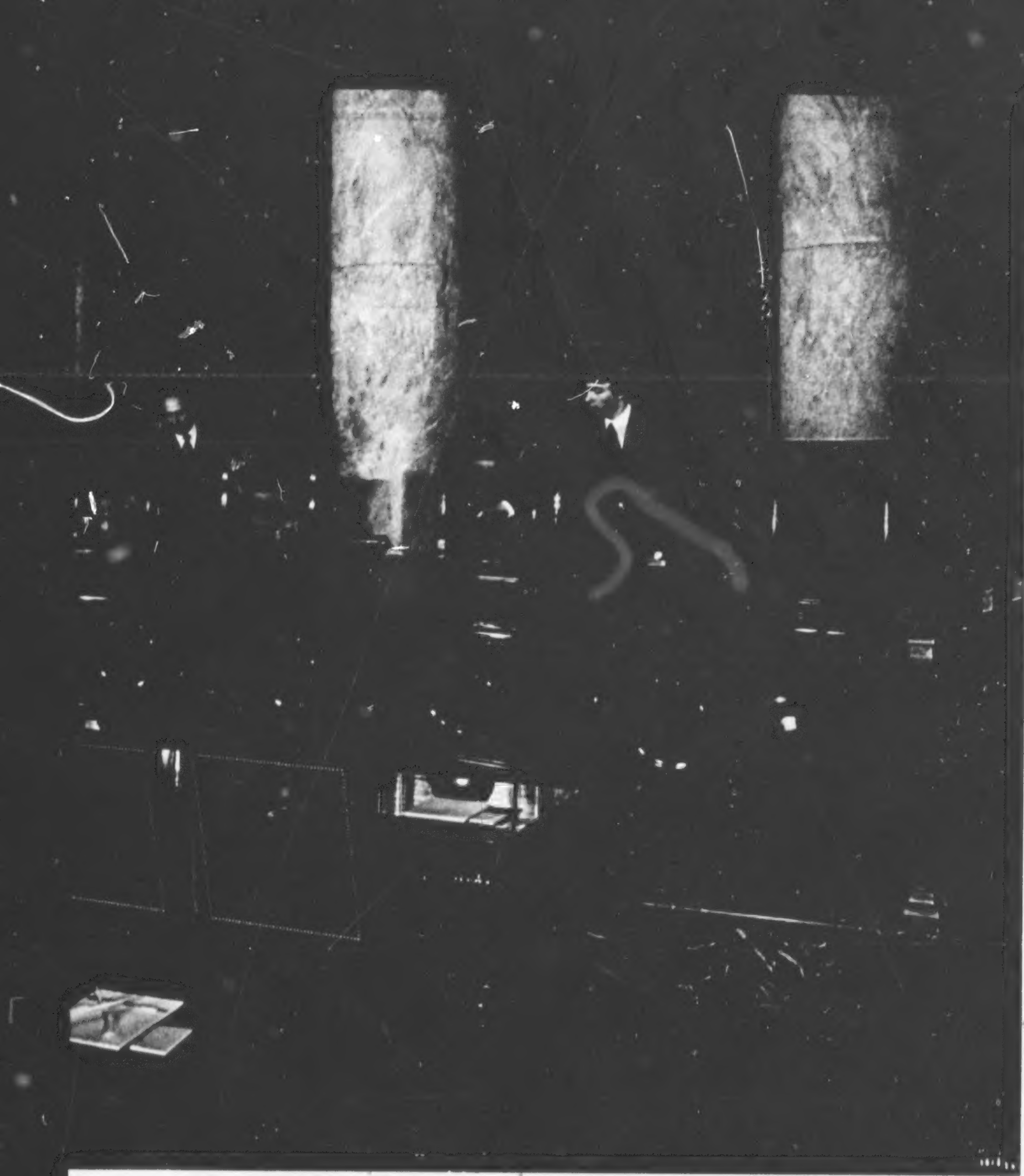
"We're a first-name Court among ourselves," says one of its members. "Chief" is the single exception. "You feel like saying 'Hi!' when you meet them in the hall," comments a staff member, but in fact "Mr. Justice" or "Mr. Chief Justice" remains the standard greeting.

SHRINE AND SEAT OF JUSTICE, *the Court's first permanent home welcomes visitors at the rate of half a million annually. Above, workmen on scaffolds repaint the ceiling of the Great Hall in June 1974, its first renewal since the building opened in 1935. At right, sight-seeing families admire the finished work; an officer of the Court's special police force stands ready to answer questions at the door of the Courtroom.*



SCULPTURE BY PHILLIP RATNER; WIDTH 43 INCHES

IDEALIZED IN BRONZE: *the Court's angled bench, installed in 1972.*



IN THE COURT CHAMBER, *pages of the October 1973 term, supervised by Deputy Marshal Robert R. Wilkins, prepare for a public session. From left: Daniel Robinson, Linda Carlton, Deborah Gelin, Mr. Wilkins, and Mark Albertson. Cards on counsel's tables explain the proper procedure for commencing argument, and warn lawyers not to ask the Chief Justice how much time they have left. Either the Marshal or his deputy acts as Crier, formally opening each session.*

Gavel raised, Marshal Frank M. Hepler intones the centuries-old "Oyez!"—pronounced "o-yay," and meaning "Hear ye!"

JOSEPH H. BAILEY (FAR LEFT), BAILEY-KINNEY, NATIONAL GEOGRAPHIC STAFF (ABOVE AND LEFT) © N.G.S.

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH H. BAILEY © N.G.S.

REPORTER OF DECISIONS *Henry Putzel, Jr., supervises publication of* United States' Reports, *the official record of the Court's work. Secret rulings and "classified" actions have found no place in the procedures of the government's judicial branch.*

Formality in the Courtroom and the published opinion pays homage to tradition: "my Brother Douglas" or "my Brother Marshall" or "my dissenting Brothers." It also emphasizes the public scope of issues that set the Justices quarreling in print, politely and from the heart. That dignity gains value when the Court considers a question as delicate as the busing of schoolchildren between suburbs and inner city—which, because the majority found no constitutional violation in the existing situation, it foreclosed for the Detroit area in the case announced on July 25, 1974.

Tension always rises at the Court as its term progresses. By statute the term begins on the first Monday in October. By custom it ends when the work is done, normally by July 1. Spring brings the notorious end-of-term crunch. Justice Brennan tells of taking up an end-of-term disagreement with the late Justice Hugo Black, who said of the season: 'This place can become like a pressure cooker and it can beat the strongest of men."

Even after the tired Justices wind up the Court schedule for the summer, new petitions follow them and new books await study. In reality their duties never end.

MORE THAN 250 PERSONS go to work daily in the Supreme Court Building. Among them are officers the Court appoints to ensure the proper functioning of its affairs: the Clerk, the Reporter of Decisions, the Marshal, the Librarian.

For all professional matters, the Clerk, Michael Rodak, Jr., and his assistants are the link between the Justices and the legal world outside. He and his staff of 28 handle a rising flow of paper work, preparing an agenda as they check and record and sort the incoming cases.

In 1941 the Court had 1,302 docketed

cases; in 1973, it had 5,065. To deal with the growing workload and prevent a backlog, the Court has increased staff assistance and industry to what many consider the limit. Justice William H. Rehnquist talks with unmistakable repugnance of the possibility that any case might get "anything less than the best attention from any one of the nine." Of the 1973 case total, more than half came from the poor—*in forma pauperis*—people unable to pay the costs. Of such cases, about 27 percent are from inmates of prisons, claiming some violation of rights.

Mr. Rodak pulls samples from a shelf in a room full of files. A convict in Texas escaped the death penalty under the Court's decision in *Furman* v. *Georgia;* he sends a motion, carefully lettered out by hand, for a new trial. A young man in Wyoming—arrested at 17 for auto theft—claims he was denied due process of law, specifically the protection the Court extended to juveniles by a 1967 case, *In re Gault*. (The petitioner misspells it "Gualt," but he has chosen the case in point.)

The Clerk's staff separates these from the paid cases, noticing changes in passing: "Now we're getting women's lib cases, electronic bugging cases." Staff routine digests them all, summarizing the legal arguments.

The Clerk also receives lawyers' applications for admission to the Supreme Court bar—some 5,000 a year. He schedules the introductions of candidates appearing in person; and after the Chief Justice has greeted them, the Clerk swears them in as members of this bar.

As administrator and business manager, the Marshal, Frank M. Hepler, is responsible for personnel and financial matters, including payrolls and bills, and for supplies. He coordinates ceremonies—memorial services for a deceased Justice, a successor's

MUCH ADMIRED BUT SELDOM USED *stairs spiral through five floors. Two elliptical staircases, closed to the public, fascinate visitors. Despite such showpieces, the building cost nearly $94,000 less than the $9,740,000 appropriated for it.*

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IN THE MAIN READING ROOM *of the third-floor library, paneled in handcarved oak, attorneys and*

Justices' clerks tap a reference collection of more than 210,000 lawbooks, records, and journals.

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH H. BAILEY © N.G.S.

installation. He directs the Court's police force. He arranges accommodation of dignitaries and other visitors, and is the building superintendent.

When the Court is not sitting, visitors see the two beautiful spiral staircases as well as the Courtroom and Great Hall. Bronze gates and oak barriers close off the corridors leading to the Justices' chambers on the main floor.

On the ground floor, special exhibits have become an extra attraction for visitors in recent years.

New colors relieve the austerity of marble. Green plants in the corridors and flowers in the courtyards are a project of Chief Justice Burger. Gold and deep red replace institution-pale-green in the renovated cafeteria, which is open to the public but reserves midday time for the Court staff in the interest of efficiency. A snack bar supplements the cafeteria.

Visitors who want to see the Court at work should check its schedule in advance. Usually it alternates two weeks of recess, for opinion-writing, with two weeks of "sittings" for Monday-through-Wednesday argument of cases.

Spectators are admitted as seats become available.

U.S. v. *Nixon* would have jammed the Courtroom many times over just with VIP's, but the Justices insisted on keeping some space for the public, first come first served, as usual.

All visitors must check coats, attaché cases, umbrellas, cameras. The Marshal and his aides may politely find clothes too informal for a Court session. They discourage the presence of small children—"Oh, younger than about six," says a police officer. "But the young ones behave; they seem to catch the atmosphere."

Constantly during a session the aisles are patrolled to see that no one breaks the rules by sketching (permitted only in the press section) or whispering or, as officially described, expressing "favor or disfavor" at arguments or opinions.

The Marshal has jurisdiction over Court

IN HIS ROLE AS LEADER *of the third branch of government, the Chief Justice confers often with its key officials as well as with officers of the Supreme Court: from left, the Marshal, Frank M. Hepler; the Clerk, Michael Rodak, Jr.; the Reporter of Decisions, Henry Putzel, Jr.; the Librarian, Edward G. Hudon. At the Chief Justice's right sits his secretary, Mary Burns; at his left, Administrative Assistant Mark W. Cannon, with Rowland F. Kirks, Director of the Administrative Office of the U. S. Courts, and Judge Alfred P. Murrah, second Director of the Federal Judicial Center.*

AMERICANA *from the Supreme Court's past goes on display: The Court's first Curator, Catherine Hetos, prepares an exhibit of architect's sketches, sculptural studies, and plans for the majestic building. Chief Justice Burger discovered a plaster model of the building in a storage room in 1969 and concluded that such memorabilia belong in areas open to the public. Now, portraits and busts of former Justices enhance the corridors, while documents and such prized relics as John Marshall's courtroom chair occupy the ground-floor exhibit area.*

pages, whom he appoints. In years past, all the pages were chosen when they were high-school freshmen. Since 1973, however, night law students have been among the young men and women selected. Linda Carlton was the first of these.

While Court is in session, the pages wait alertly on small straight chairs behind the bench. They move smoothly and swiftly to pass notes from Justice to Justice. They may disappear behind the red draperies to deliver a message, to fill a water glass at one of two fountains on the rear wall, or to obtain reference material from the library. They may have unusual errands, as Justice Harry A. Blackmun recalls from his first day on this bench—June 9, 1970:

"I had taken my seat, and was examining things. I pulled open a drawer in the bench, and found some cough drops. And a copy of the Constitution, stamped 'O. W. Holmes' and signed by Justice Frankfurter, a successor in this seat. The Marshal brought me a Bible to sign—presented by the first Justice Harlan and signed by all the Justices since. Suddenly Byron White was leaning over to me, whispering. 'Harry! Harry, where's your spittoon?' He snapped a finger—softly—for a page. '*Get the Justice his spittoon!*' "

Today the spittoons serve as wastepaper baskets. Before each chair at the four counsel tables lie white goose-quill pens, neatly crossed; many lawyers appear before the Court only once, and gladly take the quills home as souvenirs. Snuffboxes, once indispensable, vanished long ago, along with arguments that lasted for hours and soared to splendid heights of oratory.

OPENING FORMALITIES link the current day to the past. The Marshal or Deputy Marshal acts as Crier. A few minutes before 10 a.m., Crier and Clerk, formally dressed in cutaways, go to their desks below the ends of the high bench. Pencils, pens, papers, and briefs are waiting at each Justice's place.

At their tables, attorneys glance over notes or confer softly. A young man may fidget slightly, smoothing hair that falls to his collar, while a veteran checks his watch. Seconds will count, for today each counsel has only 30 minutes—unless he or she has a very unusual case.

Meanwhile, the Justices themselves, summoned by buzzer, have gathered in their conference room. Each shakes hands with all the others, even if they were chatting a few minutes earlier. Chief Justice Fuller instituted this unvarying custom as a sign that "harmony of aims if not of views is the Court's guiding principle." Then they don their black robes and assemble behind the red velvet draperies.

Promptly at 10 the Crier brings down his gavel. Everyone rises instantly as he intones: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States!"

Even on routine days these moments never lose their drama. It rises to throat-drying intensity on occasions when great issues are in the balance.

Simultaneously, as the Crier speaks, the nine Justices stride through openings in the curtains and move to their places. The Crier chants his call for silence: "Oyez! Oyez!! Oyez!!!" From the centuries that Anglo-Norman or "law French" was the language of English courts, the word for "Hear ye!" survives.

Steady-voiced, the Crier continues: "All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"

The gavel falls again. The Justices and all others take their seats. Visitors unacquainted with the Court can check identifications against a card-size seating chart. (As men who, for their power, get remarkably little publicity, Justices sometimes go unrecognized for coffee in the cafeteria.)

On their high bench the Justices suggest the variety of American life: men of differing backgrounds and philosophies, temperaments and accents.

In the center sits Chief Justice Burger, a native of Minnesota, a lawyer in private practice there for 21 years, Assistant Attorney General of the United States for three years, a judge of the Court of Appeals for the District of Columbia from 1956 to 1969. He came to this Court in June 1969, appointed by President Nixon.

Seniority determines the seating of the eight Associate Justices, alternating between the Chief's right and his left. (For the ordering from a spectator's vantage point, see page 112.)

At the Chief Justice's immediate right sits the senior Associate, William Orville Douglas, the "hiking man" who completed 36 years of service on April 17, 1975. No Justice in history has served longer. A colleague says, "*Nobody* knows the cases of those 36 years like Bill Douglas!"

Appointed by Roosevelt in 1939, he has written the story of his early life in a notable autobiography, *Go East, Young Man,* and given his own vivid account of practicing law in New York City and Yakima, Washington, teaching at Columbia and Yale, chairing the Securities and Exchange Commission, and acquiring his celebrated zeal for conservation and for outdoor life.

At the Chief's left sits William Joseph Brennan, Jr., formerly a judge of the New Jersey Supreme Court, a Democrat appointed by Republican President Eisenhower in 1956.

To Douglas's right: Potter Stewart, of Ohio, former judge of the Court of Appeals for the Sixth Circuit, youngest federal judge in the country when appointed at 39, named to this Court by Eisenhower in 1958.

Thurgood Marshall, born in Baltimore, judge of the Court of Appeals for the Second Circuit from 1961 to 1965, Solicitor General from 1965 to 1967, and named to the Supreme Court by President Lyndon B. Johnson in 1967.

Lewis F. Powell, Jr., Virginian, in private practice in Richmond from 1932 until 1971 (except for war service, 1942 to 1946), coming to this Court in 1972 by President Nixon's appointment with a long record of leadership in legal circles.

From the Chief Justice's left, after Justice Brennan: Byron Raymond White of Colorado, former Deputy Attorney General, appointed to the Court in 1962 by President John F. Kennedy.

Harry A. Blackmun, in practice in Minnesota for 16 years, counsel to the Mayo organizations for a decade, judge of the Eighth Circuit Court of Appeals from 1959 to 1970, named to this Court by Nixon.

INNER COURTYARD, *one of four, offers a springtime setting for a midday break enjoyed by law clerks and secretaries, messengers and pages, with snacks available from carry-out facilities on the ground floor. "You see," says one of the Court's staff members, "this place is something more than nine overpowering presences."*

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William H. Rehnquist, born in Milwaukee, a lawyer in Phoenix from 1953 to 1969, Assistant Attorney General until 1971, taking his seat here on the same day in 1972 as Justice Powell, also a Nixon appointee.

Though muted by the occasion, individuality shows clearly as the Justices begin their work. Usually, as the first item of business, the Court admits attorneys to its bar. Then, if an opinion is ready for release, the Chief Justice calls for it, and its author announces it. A dissenter may speak for those Justices who disagree: "... we think the Court muddies the waters further... we would affirm the judgment below...."

Probably many visitors expect the proceedings to be solemn, almost holy, but beyond laymen's understanding. "Oh, some cases are extemely technical," remarks Justice Stewart disarmingly, "tax or patent cases, and I wouldn't understand them if I hadn't done the homework. But many of them anybody can comprehend—the capital punishment cases, for instance. And our procedure's simpler than other courts'—more informal."

Argument is easier for all to follow since the Justices approved a change in the shape of their bench. "I remember when I used to argue cases here," a senior lawyer recalls. "I would get two questions at once, from opposite ends of the bench—the Justices couldn't see or hear each other." In 1972, at the suggestion of the Chief Justice, the bench was altered to its present shape, with two wings each set at an 18-degree angle, a form that has been widely used in American courts since the mid-1950's.

Even the technical cases can stir alert attention as the lawyer begins—"Mr. Chief Justice, and may it please the Court..."—and develops his theme—"... insurance companies are entitled to justice like anybody else...." The questions start. Resonant, low-pitched queries from Justice Rehnquist; Tidewater-Richmond inflections as Justice Powell says, "I don't want to interrupt your argument, but...."

Justice Stewart leans forward, cheek on right hand: "I've heard it, and read it, and perhaps even written it many times...."

Justice White rocks briskly, swings forward to press a line of questions, stirs a

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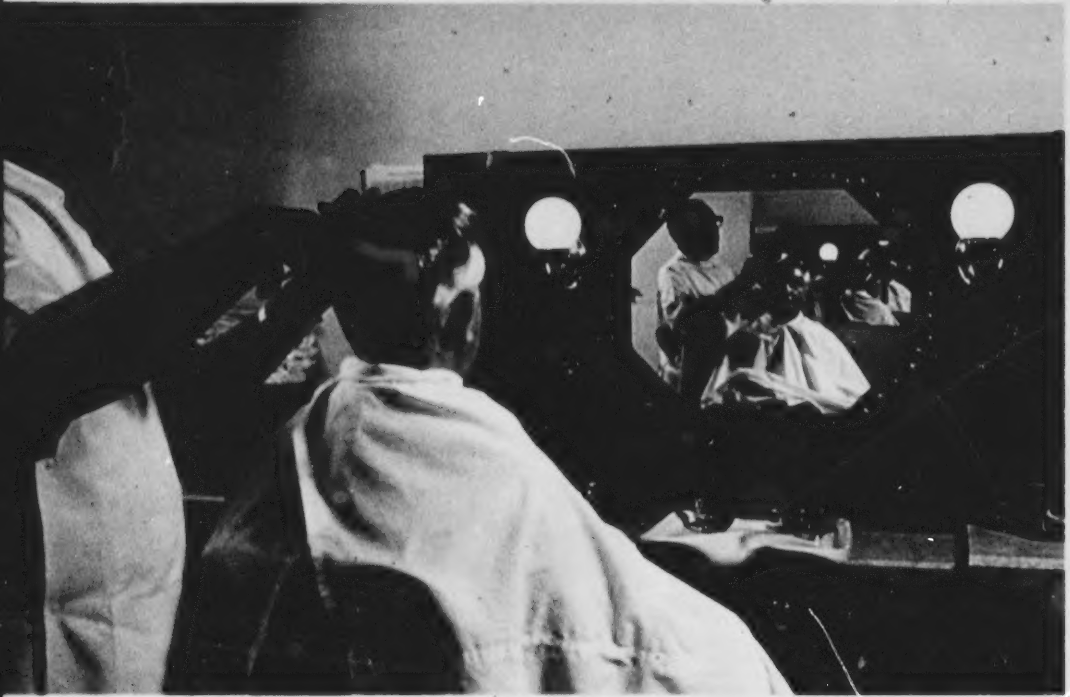
AVID READER *with a wide range of interests, Justice Douglas scans a new book before turning to a demanding Court schedule. The senior Associate Justice has served longer than anyone else in the history of the Supreme Court, and in April 1975 completed 36 years. Although hospitalized by a stroke on December 31, 1974, he had recovered sufficiently to hear several cases during the spring of 1975.*

JOSEPH H. BAILEY (BELOW AND RIGHT); BAILEY-KINNEY, NATIONAL GEOGRAPHIC STAFF © N.G.S.

CRAFTSMANSHIP *and style concern specialists behind the scenes. In the carpentry shop, Edward F. Douglas (left) and Frank Howarth build a Justice's chair; the shop produces custom furniture for the Court, such as finely worked bookcases in the library. Below, Ted Atcherson trims the hair of Barrett McGurn, the Court's public information officer.*



ripple of amusement with the comment that "I suppose you'd rather win than lose."

The lawyer may think a given ruling would "cause trouble in some of the district courts—I think this would be a horrible thing to do." Or urge a "bold, sweeping" decision: "The Court can clear up this area for generations to come!" (The Court prefers narrower decisions when possible.)

An attorney used to this Court may take an unwelcome idea in stride: "Possibly, your Honor, but I would suggest. . . ." Or suavely field a question on what Congress intended in a statute: ". . . the Congress does many things that I wonder at. . . ."

Brief distraction on a fine spring day: Counsel breaks off in midsentence, ducking and bobbing and swatting with both hands —a wasp? a bee?—and Justice White sympathizes: "It's very dangerous here."

With veiled ruefulness a lawyer remarks, "I see my time is running short"; or the Chief Justice may offer a gentle reminder, "Counsel, you are now using up your rebuttal time." Or the other way around: "We have taken much of your time with our ques-

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SOBS TURN TO SNIFFLES *as Capt. Vernon W. Coble and Officer Nancy Porter soothe a little girl who wants her parents. Officer Willie C. Williams brings a candy bar, standard consolation for lost children while the police find their families.*

tions; we will give you six more minutes."

When a red light glows on the lectern, the Chief Justice says, "Thank you, Mr. Smith. The case is submitted."

SUPREME COURT cases come in three varieties. Least numerous are the "original jurisdiction" actions, brought by one state against another, or between states and the federal government. The Constitution also empowers the Court to hear "all Cases affecting Ambassadors, other public Ministers and Consuls." In these the Court sits as a trial body from which there is no appeal.

Few original jurisdiction cases are filed—usually one to five per term—but sheer bulk makes many of these difficult.

When Arizona sued California in 1952

over water from the Colorado River, the Court appointed a special master in chancery, George I. Haight of Chicago, to take evidence and make recommendations. Haight died in 1955; his successor was Simon H. Rifkind of New York City. From 1956 to 1958, Rifkind heard 106 witnesses and took depositions from 234 others.

The completed trial record covered more than 26,000 pages. Briefs and other documents filed by the states took about 4,000 more. Rifkind's own report, 135,000 words, went to the Court in January 1961. The Justices heard 16 hours of oral argument in the fall of 1961, six hours more in November 1962. The Court's decision, in 1963, favored Arizona.

More numerous, but mercifully shorter, are cases from state courts. If any state tribunal decides a federal question and the litigant has no further remedy within the state, the Supreme Court may consider it.

Most common—roughly two-thirds of the total—are requests for review of decisions of federal appellate or district courts. "Most of the time," observes a Justice, "it's the rights of someone we'd never meet. . . ."

The great majority of cases reach the Supreme Court as result of its granting petitions for writs of certiorari, from the Latin *certiorari volumus*, meaning "we wish to be informed."

Normally the "writ of cert" says in effect to an appellate court, "Send us this case you decided recently." In very rare instances a writ of certiorari before judgment says, "Send us this case you haven't decided yet." As in *U. S.* v. *Nixon*, it enables the Court to act with maximum speed in unusual cases of great public importance.

But "each case has supreme importance to the people involved," as Justice Stewart observes, and the number of petitions filed rises from year to year. Justice Brennan noted an increase of 75 percent in his first seven years with the Court. Filings went from 2,185 in the 1961 term to 3,643 in 1971 and 4,640 in 1973. Deciding which cases to decide is a load in itself.

Each Justice determines how he will vote on each certiorari petition, usually with the help of a law clerk's memorandum. Since 1972, five Justices have been utilizing a

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FROM COURTROOM *via pressroom, cases reach the public. Within seconds, as the Chief Justice announces a decision, a phone call from the Clerk's office notifies information officer Barrett McGurn, who distributes copies of each new opinion to assembled reporters. The Justices' deliberations, however, remain a secret.*

In the exercise room, physical therapist Ellsworth J. Shegonee works out with a jump-rope. His regular clients for health-building routines include the members of the Court.

Seamstress for the Court, Mrs. Bertha L. Glimps repairs a tear in a flag flown before the building. Behind her hangs a robe belonging to the Chief Justice, an accidental snag now neatly mended.

"cert pool" system, open to any Justice who wishes to join. Clerks from their chambers take turns writing a "pool memo" on a batch of petitions. This memo circulates among the five—Burger, White, Blackmun, Powell, Rehnquist—and each can use a clerk of his own staff for further research. The other four Justices prefer a memo from their own clerks or read the petition itself. Roughly 70 percent of all petitions reach the end of the road on the vote at this stage, without further discussion.

Of the cases remaining, the Justices screen the problems closely—by a process that they explain freely in outline. They meet on Wednesdays and Fridays during term time in a conference room as secret as any in the government. In a capital full of classified matters, and full of leaks, the Court keeps private matters private. Despite the speculations of reporters, details of discussion and voting are simply not revealed.

No outsider enters the room during conference. The junior Associate Justice acts as doorman and messenger, sending for reference material, for instance, and receiving it at the door.

Five minutes before conference time, 9:30 or 10 a.m., a buzzer summons the Justices. They exchange their ritual handshakes and settle down at their long table. The Chief sits at the east end, the senior Associate at the west.

Before each Justice is a copy of the day's agenda. Each decides for himself when he should disqualify himself from taking any part in a case.

The Chief opens the discussion, summarizing each case. The senior Associate speaks next, and comment passes down the line. Voting follows the same order of seniority. To qualify for review, a case must get at least four votes.

Counsel then submit their briefs and records so each Justice receives a set two or three weeks before argument. From these the Justices often make bench memos that highlight facts and points of law and questions for the lawyers.

("I wonder," muses Justice Blackmun, "if we always remember how much power we exercise just in our questioning.")

DRAFTING AN OPINION, *Justice Blackmun escapes telephone interruptions in a library reserved for members of the Court. Book-*

Paradoxically, perhaps—in light of the tight control over conference confidentiality—the Supreme Court maintains its standing as one of the most open of government agencies and one of the most public of courts. It acts only on matters of public record; it hears counsel's arguments in public; all its orders and opinions are on the record. All conference decisions are published, most of them the following Monday. Minutes after a case reaches the Court it is in the hands of newsmen, and journalists have the right to see all materials presented with any case.

NATIONAL GEOGRAPHIC PHOTOGRAPHER JOSEPH H. BAILEY © N.G.S.

marks suggest the number of precedents a Justice might study to clarify federal law for a fairly typical case—among hundreds each year. "Service here," says one, "gives you a never-ending education in the problems and promise of American society."

When the vote has been taken on a case, the writing of an opinion is assigned—by the Chief if he voted with the majority, otherwise by the senior Justice of the majority. Dissenters may agree among themselves who will explain their view. Any Justice may write his own opinion, concurring or dissenting.

As drafting begins, the law clerks comb every possible source for helpful material. "Nobody works harder," says Justice Powell warmly. "They're here six and a half days a week, they're often here on Saturday night." These young men and women come to the Court as honor graduates of law schools, alert to current research and thinking there. Appointment as a clerk carries great honor in itself.

Justice White was clerk to the late Chief Justice Vinson; the youngest member of the present Court, Justice Rehnquist, was clerk to the late Justice Jackson. Then a Justice had two clerks and one secretary; now he may have three clerks and two secretaries, as well as a messenger.

The secretaries cope with stacks of mail. Invitations to lecture, or to meet schoolchildren. Innocent questions ("What is due process?"). Criticism—especially on such highly charged issues as abortion, obscenity, and the death penalty—ranging from reasoned analysis to rage. "Dear Sir: You are a skunk!" quotes one Justice wryly. "Name-calling," says another, rather sadly, "comes with the job."

By statute the Chief Justice's duties extend well beyond the Court and his position as its presiding officer. He is also responsible for the administrative leadership of the federal judicial system. He is chairman of the Judicial Conference of the United States, a "board of trustees" for the federal courts. He supervises the Federal Judicial Center with its programs of research and education, and the Administrative Office of the United States Courts, "housekeeper" and statistician for the system. And he serves as chancellor of the Smithsonian Institution, and chairman of the board of the National Gallery of Art. His perquisites, accordingly, include four law clerks, extra secretarial help, and a government car with chauffeur.

In 1972, for the first time, the Chief Justice acquired an Administrative Assistant, Mark W. Cannon, to help meet responsibilities and needs of the federal court system. The Court has also gained two Legal Officers, or staff counsel: James Ginty and Susan Goltz. Ginty defines the role as one with "no formality to it—helping the Court or any Justice any way we can with legal and judicial detail."

Whenever a Justice calls for legal or historical references, he has the help of Edward G. Hudon, librarian and officer of the Court, and his staff of 14. These experts provide research materials from a library of more than 210,000 volumes, accessible not only to the Justices and their law clerks but also to members of the Supreme Court bar, members of the Senate and House, government attorneys, and—by special arrangement—visiting scholars and journalists who cover the Court regularly.

Professional writers themselves, Justices spend hours of hard work on draft opinions. When an author is satisfied with his document, he sends it to the print shop, which works under rigid security rules on the ground floor. Often, on getting his proofs, the writer finds his work has only begun. He circulates copies, numbered for security, for the reactions of his colleagues.

Constantly the Justices exchange comments, by memo or at the lunch table. To discuss ideas and wording by telephone,

WORKING PAPERS *of the conference room—notebooks, memos, briefs—await the Justices' return from lunch on a Friday in the regular term. Here they determine which cases to review, what decisions to hand down. Conference clerk Alvin Wright distributes files; he will leave when the Judges come back. The junior Associate Justice takes in or sends out messages at the door, to safeguard the absolute privacy of the Court's confidential discussions.*

they use a private line that does not go through the switchboard. Draft dissents may prompt revisions or change votes, even enough to create a new majority.

Moments of diversion lighten the routine: table tennis with clerks; for Justices Stewart, Rehnquist, and the Chief, carol-singing at the Court's Christmas party; for Justice White, a star athlete who earned his way through Yale Law School as a professional halfback, basketball in the Court's small gym.

Special duties interrupt the routine. Each member of the Court has jurisdiction over one or more of the 11 federal judicial circuits. As Circuit Justice he may issue injunctions, grant bail, stay an execution.

But finally—when all corrections and revisions are in hand—a master proof of each finished opinion goes down for printing. On the day of release, final copies go to the Clerk for safekeeping, and to the Reporter of Decisions: Henry Putzel, Jr., with a staff of nine, writes headnotes—short analytical summaries of the opinions. He also supervises publication of *United States Reports,* official record of the Court's work.

In the press room, reporters wait swapping shop talk over coffee in throwaway cups: "... this crazy lawyer ..." "That the upstate sludge case?" ... "Not worth getting excited about—rights for women ..." "... Congressional action ..." "I stand with Marshall and Douglas."

Public information officer Barrett McGurn distributes the journalists' copies

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when a call from the Clerk's office reports their release, and reporters scatter to phones or typewriters or toss off a verdict: "I don't care *what* the Court said!"

PROCEEDINGS in the Supreme Court have been moving at a brisker pace in recent years. Most lawyers are admitted in absentia to Court practice, releasing many hours in the Court's schedule. In most cases the time allotted for oral argument has been cut from two hours to one. Only the summaries of opinions are read from the bench. These changes have meant a saving of one and a half days of Court time per week.

The headnotes provided newsmen along with opinions since 1970 have been invaluable, especially for wire service and radio-television correspondents, who often had to digest hundreds of pages of opinions in minutes or be late with their news flashes.

Routine altered abruptly when the Court announced on May 31, 1974, that it would hear argument in *U.S.* v. *Nixon*. By telephone, letter, and personal plea, American and foreign journalists begged for seats in

JUSTICES *of the Supreme Court in 1975, these nine members complete a list of 100 Judges who have served since 1790. From left: seated, Associate Justices Potter Stewart, William O. Douglas; Chief Justice Warren E. Burger; Associate Justices William J. Brennan, Jr., Byron R. White; standing, Associate Justices Lewis F. Powell, Jr., Thurgood Marshall, Harry A. Blackmun, William H. Rehnquist.*

Nominated by the President and confirmed by the Senate, the Justices hold office during "good Behaviour"—for life or until retirement.

ROBERT S. OAKES, NELSON H. BROWN © N.G.S.

the Courtroom's press area. Briefs in each case are available in the pressroom, and this set got concentrated study while the regulars waited for their special passes. Everyone knew the general background.

With seven defendants indicted for conspiring to obstruct justice by hiding White House involvement in the Watergate break-in case, Judge John J. Sirica had ordered President Nixon to produce tapes and papers on 64 conversations as evidence.

The President claimed immunity from court orders, sole discretion to act as he saw fit, absolute privilege to withhold his records. Briefs in his behalf cited the Constitution's separation of powers. Briefs for the United States stressed the unique position of Special Prosecutor Leon Jaworski, the historic duties of the courts, the Constitution's structure of checks and balances.

Because the Supreme Court called for argument on technical issues of jurisdiction and procedure, these took on interest far beyond the ordinary. They might foreshadow the decision that would resolve a constitutional crisis—or reveal a crisis beyond the peaceful ways of law.

"Nothing happened," said one bemused spectator after the three hours of argument on July 8. "It was so . . . ordinary," remarked another. The Court's formal ritual and informal manner had not varied.

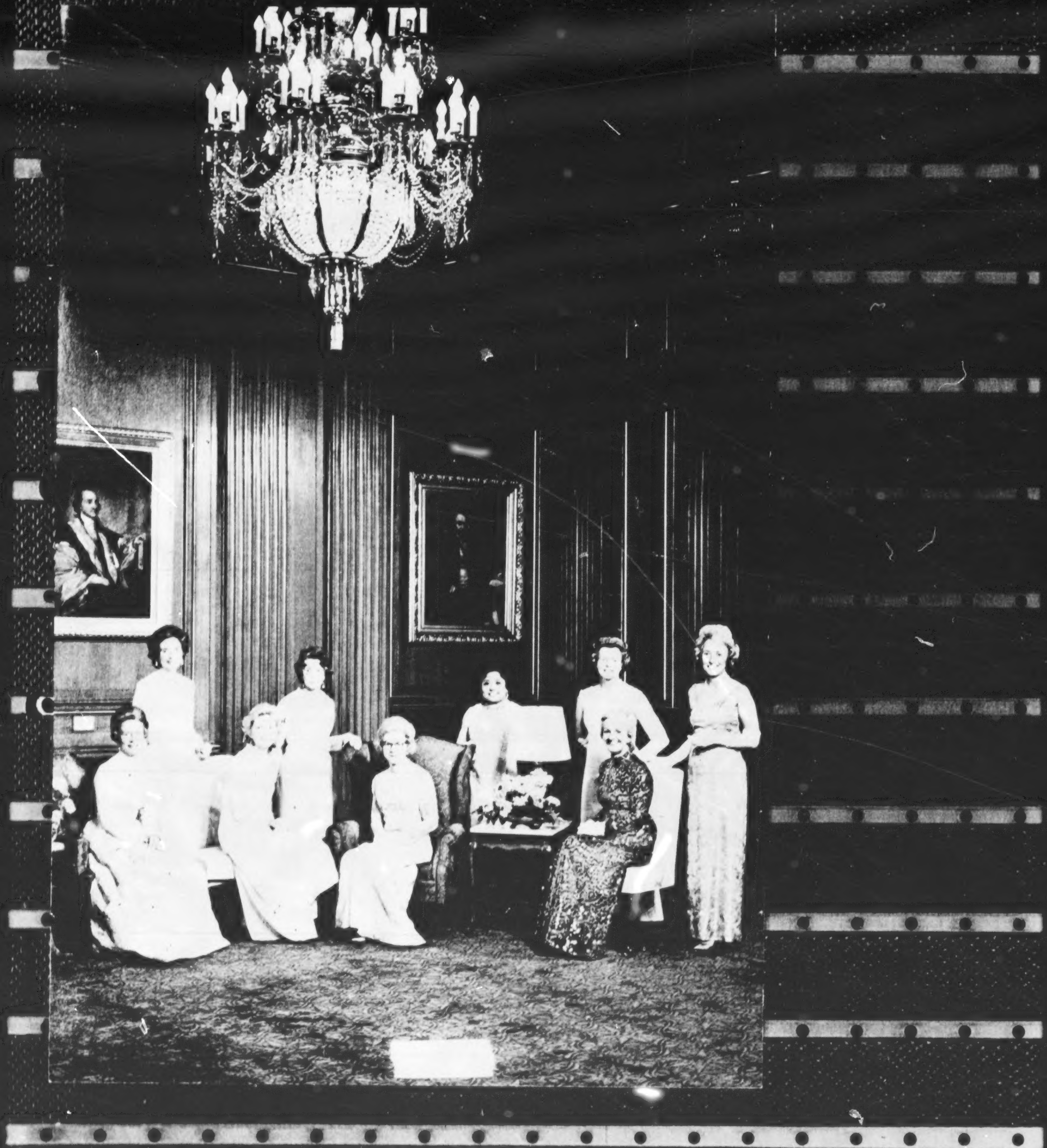
Texas drawl in his voice, Mr. Jaworski declared that ". . . boiled down, this case really presents one fundamental issue: Who is to be the arbiter of what the Constitution says?" The President was making himself the sole judge; he "may be right in how he reads the Constitution. But he may also be wrong."

Justice Stewart, matter-of-factly: "Well, then, this Court will tell him so."

More than one a minute, questions came from the bench.

Justice Douglas saw at "the heart of this case" the rights of defendants in a criminal trial. The President's advocate, James D. St. Clair, urged the Court to avoid matters pending in impeachment; Justice Brennan commented dryly, "Any decision of this Court has ripples."

Justice Marshall pressed Mr. St. Clair to



concede that the case was one for this Court's decision; no one asked bluntly if the President would obey its order. Justice Powell, even-toned, forced the issue of absolute privilege and secrecy: Even in a criminal conspiracy? Yes, said the President's lawyer, "even if it's criminal."

Seasoned lawyers do not escape tension here. Once Mr. St. Clair with a slip of the tongue asked the court to uphold Judge Sirica; and Mr. Jaworski, in his effectively low-key argument, momentarily overlooked the fact that he represented Judge Sirica's position.

Only 30, but experienced in this Courtroom, assistant prosecutor Philip A. Lacovara contributed a more formal eloquence: ". . . this President is not in a position to claim . . . privilege. . . . These conversations . . . were in furtherance of a criminal conspiracy to defraud the United States. . . ." Surely no charge more sensational had ever come before the Court.

Then he discussed with the Chief Justice, as if in a seminar, the fundamental precedent: *Marbury* v. *Madison*.

At 1:04 p.m. the Chief Justice closed the session: "Thank you, Mr. St. Clair. Thank you, Mr. Jaworski and Mr. Lacovara.

"The case is submitted."

The crowd streamed out into the sun; more than 1,500 had obtained at least a five-minute share of the occasion—a law professor, a Japanese reporter, a nun, a girl with tan shoulders bared by a sunback dress, a white youth with bushy Afro haircut, a middle-aged black man in a cream-colored business suit. Headlines took up the issues: "Shun Gate Case, St. Clair Asks" or "Jaworski: Constitution Is in Peril." The Nation waited.

Death claimed Earl Warren, retired Chief Justice, on the night of July 9; the Court paid him a tribute without precedent. His casket, flag-covered, was placed in the Great Hall to lie in repose, his chair near it. Members of his profession and of the public came, to pause at the bier, gaze at the lighted Courtroom beyond, quietly register their names.

ON A GRAY and muggy July 24, a tense crowd, assembled on short notice, filled the Court Chamber. As the hands of the clock inched past 11, the cry of "Oyez!" rang out. On this occasion the gravity of the opening never altered; Justices and pages alike sat impassive. With somber dignity the Chief Justice took note of the death "of our beloved colleague."

Then he went on to announce the opinion he had written for a unanimous court. "Narrow," some commentators called the decision later. It was, in ruling that here the President's privilege must yield to the demands of a fair trial. "Broad," others called it. It was, in reaffirming "what was said in *Marbury* against *Madison*"—that it is "emphatically the province and the duty" of this Court "to say what the law is." For 17 minutes the summary moved gravely on. "Accordingly, the judgment under review is affirmed." The gavel fell.

"A sledgehammer decision," one newsman called it that night.

On August 9 President Nixon resigned. The publication of three conversations from the disputed 64 had brought his term to an end. At noon that day the Chief Justice administered the oath of office to the new President, Gerald R. Ford.

Observers abroad commented that the entire episode not only reinforced the rule of law in the United States but also enhanced the position of the judiciary in other countries. Few events in a long history have underlined so sharply the Court's role as guardian of the Constitution.

Interviewed outside the Court on the day of decision, a tourist from Waco, Texas, told a television reporter that if the Supreme Court says it, it's the law. On such assent rests the paradox of America, as President Ford has stated:

"Our great republic is a government of laws and not of men. Here the people rule."

WIVES OF THE JUSTICES, *gowned for a formal entertainment, gather in the East Conference Room. From left: seated, Mrs. Stewart, Mrs. Douglas, Mrs. Burger, Mrs. Brennan; standing, Mrs. Rehnquist, Mrs. Blackmun, Mrs. Marshall, Mrs. Powell, Mrs. White. The Court's receptions and dinners honor distinguished men and women of the legal profession.*

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The Federal Court System

"It's the American way to say, 'There ought to be a law!' And Congress passes a law—on civil rights, or environmental protection, or consumer protection. Common sense alone will tell you, you'll have more lawsuits.

"Everyone wants instant justice," muses District Judge Aubrey E. Robinson, Jr., "like instant therapy, or instant food.

"But as life gets more complex, legal rights get more complex. And we're a complex people, of varied backgrounds. There will always be a time lag in the judicial resolution of disputes."

Comments on the "law explosion" of recent years come from many of the 400 judges sitting in the federal judicial system's 94 district, or trial, courts—where case filings have doubled in 20 years. In fiscal 1974 the district judges received 103,530 new civil cases and 39,754 new criminal cases. The backlog exceeded 100,000.

With a greater burden than ever before, the federal judicial system has entered a period of reform and innovation. In 1968 Congress created a system of U. S. magistrates; in 1974 they handled nearly a quarter of a million matters that district judges would have had to deal with, such as pretrial discovery proceedings. Experiments with videotape promise new and time-saving ways of taking testimony. Computer programs help judges and court clerks keep track of their caseload, or improve the procedure for calling jurors.

In the District of Columbia, one unhappy systems analyst spent a month cooling his heels in the jury lounge. Exasperated, he offered to back up with computer techniques a study the court had undertaken on juror utilization. Resulting reforms saved time for all concerned—and money.

Such measures are especially important because no one wants apparent efficiency at the price of injustice, and the painstaking techniques of courtroom questioning—techniques that John Marshall would find familiar—simply cannot be hurried beyond built-in limits. Fair procedure and sound results count all the more in district courts because about nine-tenths of all federal cases end at the trial level, without appeal.

Only about 15 percent of defendants in federal criminal cases actually go through a trial. Many other cases are settled by plea bargaining: The defendant's lawyer negotiates with the U. S. attorney for something less than the stiffest possible charge, and the defendant pleads either guilty or *nolo contendere*—"I do not wish to contest it."

Judge Walter E. (Beef) Hoffman, who presided in the case of Vice President Spiro T. Agnew, points out that such bargaining is nothing new. "Lawyers have made discreet approaches to other lawyers for years," he observes, but the realities of plea negotiation long went unacknowledged. That, he says, permitted the double vice of invisible proceedings and lack of candor. Now the judge makes the proceedings a matter of record—for later use, if need be.

Appeals in the federal system have increased, of course: nearly 4,000 in fiscal 1960, more than 16,000 in 1974. The 11 courts of appeal sit to correct errors at the trial level or in administrative agencies, and act in effect as regional Supreme Courts. Here the number of judges varies, depending on caseload, from three in the First Circuit to 15 in the Fifth. In each case, however, they work in panels of three or more; and the odds are, says Judge Ruggero J. Aldisert of the Third Circuit, that "the judicial buck stops here."

Of 1,280 cases decided by his court in fiscal 1972, the Supreme Court granted only four petitions for review. "The Supreme Court's always above us in theory," he says, "but in practice this is the highest court you can get to by right."

From the public generally, the courts of appeal get little attention. "In some of the most controversial cases," Judge Aldisert remarks, "there's nobody present but the lawyers, and the press coverage tends to be skimpy even on interesting cases. At the peak of Watergate, we held that the President may wiretap a foreign spy without a court order. The press slept through it."

But law schools, he points out, act as a highly critical public, and analyze appellate decisions "unmercifully."

As a source of self-analysis and research, the Federal Judicial Center has played an increasingly important role since Congress founded it in 1967. To the parlors of Dolley Madison's old home on Lafayette Square in Washington, D. C., it brings judges from all over the country. They discuss more effective ways of working with clerks or probation officers, or the painful topic of sentencing. They share grievances and gripes.

Seminars for newly appointed judges ease an awkward transition ("All of a sudden," says one, "lawyers are afraid to ask you to lunch"). Experienced colleagues offer intensive lessons in how to manage complex civil cases or cope with unruly defendants. "I wish we had had this when I was new," remarks a veteran. "I was scared to death to charge a jury."

All told, the center—now directed by Judge Hoffman—trains about 2,000 persons a year, court staff as well as judges.

A similar center for state courts has begun work in Denver, Colorado; and more than 40 states have created State-Federal Judicial Councils. Since state courts may decide federal questions (as in the case of Oregon's "bottle bill") and federal courts must deal with state law on occasion, these councils have obvious value. And coordination of the two systems can end the frustration of lawyers or jurors expected to be in two courts at the same time.

Of the three coequal branches of the federal government, the judicial is by far the smallest. Its personnel numbered only about 10,000 in 1974; its budget hovers in the vicinity of $300,000,000 a year, and runs about one-tenth of one percent of the federal total.

Tiny sums—by government standards—can pay off impressively. Chief Judge Howard T. Markey of the Court of Customs and Patent Appeals tells how his court brought its lagging docket current. The

CECIL LOCKARD, ANN ARBOR NEWS

NOVEL ISSUES *push a rising caseload higher. In 1972 Sonia Yaco, 15 (above), aspired to the Ann Arbor, Michigan, school board; she fought clear to the Supreme Court to put her name on the ballot, although a minor—and lost.*

Banning throwaway soft-drink and beer containers, Oregon's 1972 "bottle bill" survived challenge on constitutional grounds and inspired other state and federal laws designed to protect the environment and conserve energy.

ROBERT REYNOLDS

*"**I'LL TAKE THIS** to the Supreme Court!" Furious, Bill Smith shouts this classic threat at John Jones as they argue the blame for a collision of Jones's expensive car and Smith's heavily-laden truck.*

But to reach even the first rung of the three-level federal court system, their quarrel must qualify as a federal case. The Constitution and Acts of Congress prescribe what matters may come before U.S. courts. Others must be tried in state courts.

If Smith and Jones live in different states—and more than $10,000 is involved—a federal district court can hear their dispute. Either party, if unhappy with the outcome, may ask review by a court of appeals.

Despite his angry promise, Smith in all probability could take his case no further.

"No litigant is entitled to more than two chances, namely, to the original trial and to a review," Chief Justice William Howard Taft told Congress in 1925. It wrote his view into law with the "Judges' Bill."

To reach the Supreme Court, cases must turn on principles of law, or constitutional issues, of far-reaching importance. Of more than 4,000 petitions a year, the highest court accepts about 400—hearing argument on perhaps 180, deciding the rest without debate.

Federal courts also review decisions of administrative agencies such as the Tax Court, the Federal Trade Commission, and the National Labor Relations Board.

Congress has created special, as well as regular, courts:

The Court of Claims hears claims against the United States.

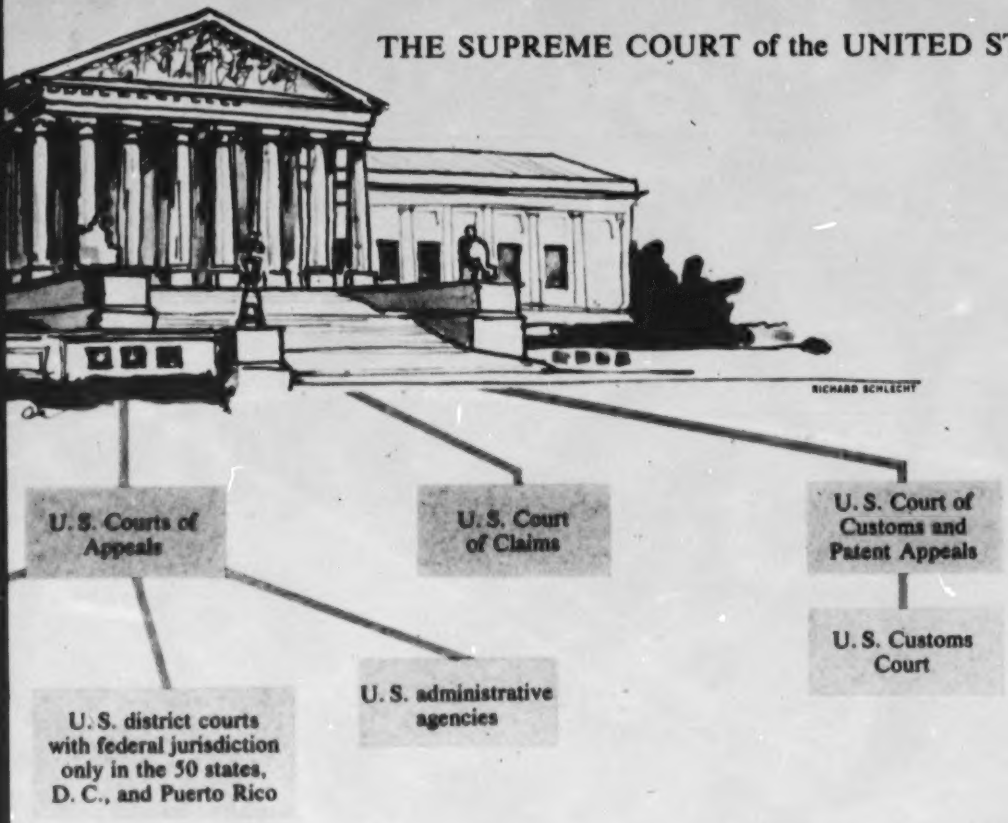
The Customs Court decides disputes over duties on imported goods. Its decisions may be appealed to the Court of Customs and Patent Appeals. The latter also reviews judgments of the Tariff Commission and of the Patent Office.

In the armed services, review normally ends in the Court of Military Appeals. Beyond this lies resort to a habeas corpus proceeding in a district court.

Besides cases from federal courts, the Supreme Court may review decisions of state judges, when cases involve a federal question and litigants have no other remedy left.

Cases from state courts
U. S. district courts with federal and local jurisdiction in the Canal Zone, Virgin Islands, Guam

THE SUPREME COURT of the UNITED STATES


RICHARD SCHLECHT
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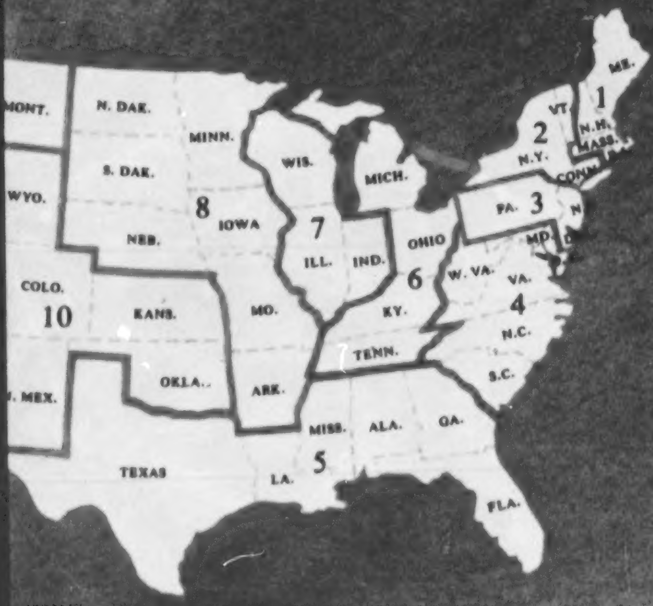
U. S. district courts with federal jurisdiction only in the 50 states, D. C., and Puerto Rico



The Federal Judicial Circuits

[illegible] set in [illegible] these [illegible] [illegible] federal circuits, ranging in size from the [illegible] Ninth to the District of Columbia. Each has its own court of appeals and a varying number of district, or trial, courts—94 in all. Circuits vary also in personnel. The First has three appellate [illegible] 13 district judgeships; the Fifth, 15 appellate and 77 district judgeships. Caseloads mount up unevenly, reflecting regional differences in population and social structure. Proposals to improve the work of the federal judiciary include a plan for 13 circuits, to make administration easier—and shorten the delays that deny justice all too often.

necessary tools included three new photocopiers, an electric typewriter for each secretary, and a portable tape recorder for each of five judges. (Ironically, this court must consider complex matters of technology: lasers, nuclear energy, space satellites.)

Only since 1971 has each circuit acquired a trained executive for administrative work that formerly fell to its chief judge (with the clerk of court and a secretary for staff).

A new grievance procedure for federal prisons promises to cut down the flow of petitions to the courts while dealing fairly with inmates. Such petitions have troubled judges for years. "I've had a stack this high," says Judge Hoffman, waving at a foot-tall pile of lawbooks. "One complained about the prison's brand of toothpaste. But you can't risk missing a genuine wrong."

"Our work has a devastating finality," comments Judge Aldisert. "A decision of our court might define the rights of twenty million people for twenty years. But we're out here with the people, all the time. And we're pretty much human beings—even if people think we probably have a black bathrobe at home."

By change and by continuity, the federal court system seeks to guard the rights of every individual. And as the great Chief Justice John Marshall said, this system "comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all."

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BAILEY-KINNEY, NATIONAL GEOGRAPHIC STAFF (ABOVE) AND JOSEPH H. BAILEY © N.G.S.

NEWLY APPOINTED *district judges gain expert advice on ethics of their profession from Circuit Judge Edward A. Tamm in a five-day seminar at the Federal Judicial Center in Washington, D. C. Such sessions ease a learn-on-the-job process summed up by experts as "sink or swim." Founded in 1967, the Center provides research and education for "the entire judicial family," says its second director, Senior Judge Alfred P. Murrah.*

At right, happily following the discussion: director emeritus Tom C. Clark, a retired Associate Justice of the Supreme Court and a pioneer of programs to train state and federal judges. He took a leading role in establishing the Center, which occupies Dolley Madison's old home, built in 1818 on Lafayette Square.

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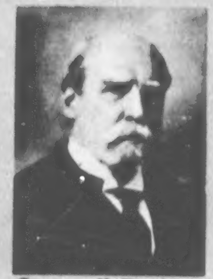
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*ASTERISKS INDICATE THE CHIEF JUSTICES. SEE ENDPAPERS LEGEND ON PAGE 4.